

807
No. 2251

United States
Circuit Court of Appeals
For the Ninth Circuit.

Apostles

(In 7 Volumes.)

MATSON NAVIGATION COMPANY, a Corporation,
Appellant,

VS.

UNITED ENGINEERING WORKS, a Corporation,
Appellee,

VOLUME V.

(Pages 1505 to 1904, Inclusive.)

Upon Appeal from the United States District Court for the
Northern District of California, First Division

FILED

JUL 1 - 1913

Records of U.S. Circuit
Court of Appeals
807

United States
Circuit Court of Appeals
For the Ninth Circuit.

Apostles

(In 7 Volumes.)

MATSON NAVIGATION COMPANY, a Corporation,
Appellant,

VS.

UNITED ENGINEERING WORKS, a Corporation,
Appellee,

VOLUME V.

(Pages 1505 to 1904, Inclusive.)

Upon Appeal from the United States District Court for the
Northern District of California, First Division

(Testimony of Richard W. Curtis.)

Q. On to a form that he had? A. Yes.

Q. Was that satisfactory to you?

A. That was satisfactory to me, as it is the general method of keeping time. A timekeeper having a handbook, checking the cards up with that handbook, and then making a résumé of that time,—that is the general method.

Q. Well, it was satisfactory to you, any way?

A. It was satisfactory; yes.

Q. Whether it was general or special? A. Yes.

Q. And thereafter Mr. Putzar furnished you with the time-sheets that you have introduced in evidence?

A. They came out of that book, yes.

Q. That is the only recollection you have of going on the ship?

A. Well, I can't recollect how many times I was on that ship, you know it is two years ago. I have been on a great many ships since then.

Q. But you have this in your mind that you went there at the inception of the work and inquired how the time was to be kept? [1313—1225] A. Yes.

Q. And you have no other distinct recollection of any other visit to the ship except that one?

A. I had a visit to the ship a couple of days before she sailed on this side.

Q. On this side? A. Yes.

Q. Leave out this side. Over there did you have any other visit to the ship that you recollect?

A. I was on and off that ship numerous times. I couldn't just tell you just exactly what day or what time I was on that ship, I could not say that.

(Testimony of Richard W. Curtis.)

Q. I am confining my question to a recollection of a particular time.

A. No. I was on and off a great many times. That is as far as I can go with it, because I do not remember any other particular visit.

Q. And connect it up?

A. And connect it up in any particular day or week from any particular fact.

Q. Except this first occasion?

A. Just this occasion I know of.

Q. Did you and Mr. Putzar at that time arrange the method of handling the time-cards between you?

A. We arranged it in as much—we followed the same routine as any other timekeeper would follow.

Q. Now, please confine yourself specifically to what was done with Mr. Putzar. Have you any recollection of making any arrangement with Mr. Putzar at that time as to how you were to handle the time-cards?

A. The arrangement was a general method employed by timekeepers whereby they check up with their handbooks the time on any sheet that might be turned over; the time-cards were turned over to them for checking on their handbook.

Q. I ask you, now, if you made any specific reference to an arrangement by which the time-cards were to be handled.

A. We made the [1314—1226] arrangement that just as soon as we got in all cards and they were properly checked up by us, they would be turned over to him for checking.

(Testimony of Richard W. Curtis.)

Q. You made that arrangement at that time with Mr. Putzar? A. Yes.

Q. How had Mr. Putzar received the time-cards which he had in his possession at that time?

A. How had he received them?

Q. Yes.

A. He received them all together in one pile.

Q. From whom?

A. From either myself personally or after I was through, if Mr. Putzar had not called to the office I would go myself and get them.

Q. We are talking about the inception of the work, Mr. Curtis; this very day that the work was inaugurated you went over there to talk over the method of keeping time and you found him in possession of a lot of time-cards. A. Yes.

Q. How did he get them?

A. Well, Mr. Putzar, he got the time-cards after I had checked them up, and he got them just in a pile as they came.

Q. Where did he get them from?

A. He got them from me on the first day.

Q. Did you take them over to him on this occasion?

A. No; he was at the office demanding the time.

Q. Demanding the time-cards?

A. Demanding the time of the ship for checking.

Q. Did he make that demand of you?

A. I was in the office; he made the demand of the timekeeper.

Q. I was referring to you.

A. We were both standing there at the time.

(Testimony of Richard W. Curtis.)

Q. Why didn't you then talk with him over the method of keeping time. [1315—1227]

A. Well, as a general rule, I don't talk with the timekeeper over the method of keeping time until the job is probably got under way, and then I try and find out how he is keeping the time. I want to know in what method he is keeping a check on us.

Q. Had you met Mr. Putzar before this occasion?

A. I met Putzar probably about six or seven years before this occasion. Mr. Putzar did not know me at the time.

Q. Where did you meet him?

A. I had met him on the Oceanic dock one day.

Q. You knew he was a great friend of Mr. Gray?

A. I did not know at that time; I did not know the man personally; only I referred to him as Mr. Putzar, that is all.

Q. You know him now to be a great friend of Mr. Gray, do you?

A. I do not. I have not seen Mr. Putzar from the day he left the ship.

Q. Do you mean to say that you don't know of Mr. Putzar at all except in connection with this work on the "Hilonian"?

A. That is all, the only time I came in contact with Mr. Putzar was in regard to in connection with repairs was on the "Hilonian," that is all.

Q. I am speaking, now, of your knowledge derived through connection with the United Engineering Works officials? A. Yes.

Q. You don't know that they knew him—

(Testimony of Richard W. Curtis.)

A. I don't know. I don't know the extent of acquaintanceship, what they knew of the man or anything else.

Q. You never saw Mr. Putzar using this printed time-book?

A. Yes, I saw Mr. Putzar using this printed time-book.

Q. The book from which your exhibit 3 was extracted? A. Yes. [1316—1228]

Q. Where was he using it?

A. He was using aboard the ship.

Q. Well, now, we are coming to another occasion when you have a distinct recollection of being on board the ship.

A. I have a recollection of seeing him use the book and seeing him use it continually, but to say at what date or what hour, or what day I saw him, I could not tell you at the present time.

Q. Now, then, you have a distinct recollection of seeing him use the time-book aboard the ship?

A. Yes.

Q. Whereabouts?

A. I could not tell you whereabouts. I have no recollection of where he was at the time.

Q. Well, was it in a room?

A. I could not say as to that.

Q. Do you know where these cards were taken to on the ship? A. Not all the time; no.

Q. Do you know any time where they were taken to?

A. At one time I saw him in a room, the time that

(Testimony of Richard W. Curtis.)

I took the cards to him.

Q. He was in a room; did he have this time-book?

A. He had the book on his desk, yes.

Q. And you delivered the cards yourself to him on this occasion in this room? A. Yes.

Q. What room was that?

A. I could not tell you; I don't know.

Q. Don't know one room from another on a ship?

A. There is a good many rooms on a ship, and unless some incident might come up that you might look at the name of the room or something on that would recall it or impress it on your mind, you would not remember it.

Q. How did you happen to go to this room?

A. How did I happen to go to this room?

Q. Yes. A. I inquired where Mr. Putzar was.

Q. And they said what?

A. They told me maybe he was down "[1317—1229] below and I know I chased around the ship, you know,—a man aboard ship, he is very likely to be anywhere on a ship, and I finally located him.

Q. Do you remember, Mr. Curtis, that you have testified that Mr. Putzar entered the time-cards into his time-book? A. Yes, this book here.

Q. Is that correct? A. This printed book.

Q. These time-cards having been checked by you and turned over to Putzar as correct were entered by Putzar in the printed time-book?

A. Yes, they were entered.

Q. After entering the time-cards in that time-book what was the object of Mr. Putzar checking over the

(Testimony of Richard W. Curtis.)

time-sheets with his handbook?

A. What was the object? Well, every man has his own method of checking; I did not inquire into his object. I suppose it was to find out whether he had transcribed them correctly or not. I did not ask the man the manner in which he intended to check it in detail, what his reasons were for checking it back on the sheets because I would take a check of the sheets myself with the time-cards.

Q. Did you ever hear him complain that the time-sheets which had been transcribed from the cards did not check up with his handbook?

A. No, sir, I did not.

Q. You never heard any complaint of a lack of harmony between the time-cards and his time-sheets?

A. Not the time-cards and the time-sheets, but the time-cards and his handbook.

Q. Did you ever hear of a lack of harmony there?

A. Well, in this way that he would come across a card that he did not think was right or his handbook did not correspond, and the timekeeper or myself, or whoever would be there would go with him to find that man. [1318—1230]

Q. Are you now generalizing or specializing?

A. I am specializing, I may state.

Q. What was the occasion on which this happened, where the handbook did not correspond with the time-sheets as transcribed from the cards?

A. There were several occasions that it didn't. But on a job like that where a timekeeper is right on the job and checks his man, why, the timekeeper and

(Testimony of Richard W. Curtis.)

ourselves reach a decision as to what should be the day's time.

Q. And in each case where there was a dispute the time-sheets as transcribed from the cards prevailed, did they not?

A. This was done before it was transcribed on the sheets.

Q. What was done before?

A. This checking up of the difference between the handbook and the cards.

Q. How do you know? A. Why do I know?

Q. Yes.

A. Because he would come to me with it.

Q. Come to you with that?

A. Well, he would say, here is a man had a card—here is a certain man, why possibly, you have got 7 hours down for him—

Q. On the time-card?

A. On the time-card. And I have only four or six or whatever it might be.

Q. How do you know that he had not already transcribed the time-card on to his sheets?

A. Because he did not turn the sheets over to me until after he had transcribed them and checked them up.

Q. I ask you how you know that. How do you know that he had not transcribed on to his sheets the cards before he had come to you with this complaint about his handbook not corresponding with the cards?

A. Well, in this manner, that I knew in this way

(Testimony of Richard W. Curtis.)

that after we had the discussions regarding—that is, at the time we had the discussions regarding the difference between the handbook [1319—1231] and the cards, why, I did not have the sheets turned over in my possession; after this discussion or these discussions, whenever they cropped up, were passed upon, sometime afterwards I got this sheet, possibly a couple of hours afterwards, which is the one I checked it up with and found that this card or that card was discarded, or whatever correction might have been on that card was eliminated from those sheets. In that way I knew he must have written these sheets out after he had checked his handbook and the cards.

Q. So Mr. Putzar, then, in these discussions as to the correctness of the time prevailed always?

A. Not always; no.

Q. Sometimes he prevailed and sometimes you prevailed.

A. Where I could show him I was right I prevailed; where I could not I did not.

Q. You ever saw him actually entering the cards on to the sheets? A. I did at one time; yes.

Q. Is that time impressed in your mind now—do you remember it distinctly?

A. I remember it distinctly, yes, in this way—in a general way I remember seeing him writing the cards on to the sheets but I could not say just at what time it was, you know, or what hour of the day.

Q. Or where it was?

A. Well, *it aboard* ship some place. I could not

(Testimony of Richard W. Curtis.)

tell you what room it was.

Q. Was it in a room?

A. I could not say that.

Q. Now, Mr. Curtis, you seem to know a good deal about this time-book of Mr. Putzar and the time-sheets and his method of keeping the time-book and handling the time-cards. Do you know when it was that Mr. Putzar tore out the duplicate sheet which has been [1320—1232] introduced in evidence as your exhibit 3 and gave it to you?

A. Mr. Putzar, as a general rule, tore them out every day. I could not say whether he missed a day or two, but I know, as a general rule, he tore them out every day, so far as I can remember.

Q. After having completed the entries in them?

A. Yes. If I did not get possession of the sheet I would ask Mr. Putzar whether the time that I gave him was correct at that time.

Q. So you are willing to testify, are you, that after Mr. Putzar had made the entries in the time-book the duplicate sheet was turned over to you, torn out and turned over to you?

A. The duplicate sheets were torn out and turned over to me.

Q. With reference to the time, after he had made the entries in the sheets, or rather after he had made the entries in the book.

A. After he had made the entries in the book he tore out the sheets, yes.

Q. So that the entries in the book on the original

(Testimony of Richard W. Curtis.)

sheet and the carbon duplicate copies must be the same.

A. I did not see the carbon copy of the sheet; that is the carbon copies or the sheets that remain in that book, that did not interest me at all. What interested me was my voucher for the time.

Q. Well, Mr. Curtis, don't you know that the sheets which you have introduced here in evidence are in part copies themselves?

Mr. FRANK.—In what way?

Mr. McCLANAHAN.—Q. Don't you know that?

A. Not that I know.

Q. Don't you know that all of the printed page, the writing on all the printed page, is a copy?

Mr. FRANK.—You mean the reverse side of the sheets.

Mr. McCLANAHAN.—That is the only printed page.

A. I don't know how that was done. [1321—1233]

Q. You know that is a copy, don't you?

A. Yes, that is done with a carbon.

Q. Mr. Putzar's signature on those sheets is a copy signature, is it not? A. Some of them are.

Mr. FRANK.—Q. That is they are copied with carbon? A. They are carbon copies.

Mr. FRANK.—Some of them are originals.

Mr. McCLANAHAN.—Q. Some of them are. Did you know that there were some original signatures and some carbon signatures?

A. I did not pay any particular attention to

(Testimony of Richard W. Curtis.)

whether it was written with carbon or whether it was written with indelible pencil or what; the only thing I noticed was the signature on there and that was all I was after. I knew that that sheet was right because it had his signature on it.

Q. I am not speaking generally of the time at which the sheets were turned over to you but I am speaking of the time subsequent to that. Prior to your introducing that exhibit in evidence, did you know that some of the signatures of Mr. Putzar were carbon copies and some were originals?

A. I did not pay any particular attention to them.

Q. You did not know it then?

A. No; only I knew that was his signature.

Q. Well, now, that is the important part of that sheet, isn't it, his vouching in writing for the correctness of the time?

Mr. FRANK.—Well, that is for us to determine, whether it is important.

Mr. McCLANAHAN.—I have a right to know what the witness thinks of the matter.

A. The important part of the sheet is the face of the sheet. [1322—1234]

Q. That would not be important if Mr. Putzar did not vouch for it?

A. Mr. Putzar vouched for it for the simple reason that he put his signature on the back, that the form is made out that way.

Q. What form is made out that way?

A. This form here says timekeeper.

Q. He put it there because it said that?

(Testimony of Richard W. Curtis.)

A. I suppose so. I don't know his object in doing so. I did not inquire as long as I had his signature to the sheet.

Q. Don't you consider that his signature to the sheet was what you wanted?

A. I consider that his signature to the sheet, and that after this was checked, his signing that was then an agreement between us as to his vouching for the time.

Mr. FRANK.—Q. By "this" you mean what?

A. This sheet, the face of this sheet.

Mr. McCLANAHAN.—Q. Now, Mr. Curtis, will you please exhibit your exhibit 3 there from the 17th to the 24th and tell me if not every signature on those respective sheets made by Mr. Putzar is not a signature which appears to be an original and not a carbon?

Mr. FRANK.—The 17th and 24th of what?

Mr. McCLANAHAN.—Q. September.

A. Yes, I believe they are written in indelible pencil.

Q. And you will also observe, will you not, that the figures on the sheets are carbon?

A. Yes, they are carbon there.

Q. The signature original and the figures carbon, can you explain that, Mr. Curtiss?

A. I don't know whether it was the manner in which the book was made up that required it to be carbon. I did not pay any particular attention to that.

Q. Have you any explanation of the fact that that

(Testimony of Richard W. Curtis.)

situation occurs only from the 17th to the 24th of September, inclusive? [1323—1235]

A. I notice it does.

Q. Have you any explanation to make?

A. Any explanation?

Q. Yes.

A. The only explanation I make of it is this, that—

Mr. FRANK.—Just call Putzar and let him explain it. It is his book.

Mr. McCLANAHAN.—Mr. Frank, please let the witness alone.

Mr. FRANK.—I have been allowing you to go on for a long time here on the theory that this was cross-examination, for the purpose of testing the witness' memory or something of that sort, but outside of that this examination is utterly incompetent, and it is improper. I have been indulging you a great deal in this matter. When you object to my making the suggestion, it is time for me to offer objection; these sheets are the sheets of your timekeeper, your sheets passed in to us.

Mr. McCLANAHAN.—Do not argue it.

Mr. FRANK.—I am going to do just as I think proper.

Mr. McCLANAHAN.—You are encumbering the record with your argument; it is unnecessary for you to make an argument now.

Mr. FRANK.—It would not be encumbering the record so much if you would not interrupt me. I say these sheets are the sheets of your timekeeper that are passed in to us as is determinative of the

(Testimony of Richard W. Curtis.)

time upon that ship, and it is immaterial to us whether he signs it in carbon or ink or indelible pencil or what; if it is a statement of the account between the parties and he has indicated it is correct, that is the end of the proposition.

Mr. McCLANAHAN.—I might answer your argument, but I prefer to do so before the Court.

Mr. FRANK.—Yes, I guess so.

Mr. McCLANAHAN.—Q. Mr. Curtis, you have no explanation to make of that? [1324—1236]

A. I did not pay any attention as to the manner in which he inscribed his signature.

Q. Will you please note that the sheets prior to September 17 on the printed face are all carbon copy signatures? A. I see they are in carbon.

Q. Will you please turn to the sheets of September 8; you will notice that the second and third sheets of that date have no signature of Mr. Putzar on them. Do you notice that on the printed side?

A. I notice that, yes.

Q. Was your statement on your direct examination an inadvertence that all these sheets were signed by Mr. Putzar?

A. No, not all of them were signed by Mr. Putzar.

Mr. FRANK.—Q. He asked you whether it was an inadvertence, your statement on your direct examination. A. What do you mean?

Mr. McCLANAHAN.—Q. Was it a mistake?

A. Yes, evidently it was a mistake.

Q. Turn to the sheets of September 10. I call your attention to the second sheet of September 10;

(Testimony of Richard W. Curtis.)

has that got Mr. Putzar's signature on it?

A. No, it has not.

Q. Was it an inadvertence that you said that all the sheets had the signature of Mr. Putzar on them?

A. Yes.

Q. As a matter of fact, Mr. Curtis, bearing in mind your testimony that those sheets after having been completely transcribed by Mr. Putzar were then torn out and handed to you—bearing that in mind, is it not a fact that Mr. Putzar signed the sheets from September 17th to the 24th of September after they had been passed into your office?

A. From September 17th?

Q. Yes.

A. The sheets that you mention, he did not turn them into my possession until he signed them. That is, he did not [1325—1237] turn them over to me. I did not have them, hold them in my hands, until after he had signed them.

Q. That is, they were not torn out of the book until after he had signed them?

A. Not until after he had signed them.

Q. I hand you the original time-book and ask you to examine the original pages of September 17th to 24th, and see if you find Mr. Putzar's signature on those sheets?

A. No, sir, his signature is not there.

Q. That is, you find that Mr. Putzar's signature is not on any of the sheets on the printed side or any of the original sheets from September 17th to September 24th. Now, I ask you if you find on those

(Testimony of Richard W. Curtis.)

sheets the figures on the printed page in original?

Mr. FRANK.—Let me suggest to you, Mr. McClanahan, that you in your examination I have noticed are making a mistake in calling the time-sheets in the book originals when they are carbon copies, and the time-slips introduced by us as duplicates only originals.

Mr. McCLANAHAN.—I do not agree with you.

Mr. FRANK.—All right; you can proceed in *any* *you* wish. I want to call your attention to it so that we will understand it.

Mr. McCLANAHAN.—I will make it perfectly clear before I get through.

A. This is what? How do you mean?

Q. The writing and figures other than the signature on those sheets from September 17 to September 24, inclusive, is original work, is it not, and not copy work?

A. It is in the original pencil. This is the manner in which the carbon was handled in the book.

Q. Now, in order to straighten out Mr. Frank's suggestion, I will ask you, is not the white sheet on its printed side in this time-book an original all through; that is, is not the writing on it [1326—1238] original all through, all through the book, on every sheet?

A. I presume it is. It depends on the way the man handled the carbon in the book.

Q. Original, is it not? A. I suppose so.

Q. And is not the writing on the back of the white sheet copy? A. On the back of the white sheet?

(Testimony of Richard W. Curtis.)

Q. Yes.

A. What do you consider the back? Which is the back and which the front?

Mr. FRANK.—Carbon copy, you mean.

Mr. McCLANAHAN.—Q. As I see it, the back is the reverse side from the print side; that is carbon work, is it not, in the back?

A. Yes, that is carbon work.

Q. Take your Curtis Exhibit 3; you will find that those sheets are original on the reverse side and carbon on the printed side, are they not? A. Yes.

Q. Mr. Putzar, I suppose, was working for the Matson Navigation Company at the time of doing this work?

Mr. FRANK.—You know who he was working for.

Mr. McCLANAHAN.—This is cross-examination. Make your objection.

Mr. FRANK.—Well, I object to that kind of examination. That is my objection.

Mr. McCLANAHAN.—On that ground, that I know.

Mr. FRANK.—Mr. McClanahan, do not fight it off every time.

Mr. McCLANAHAN.—I do not want the record encumbered with your argument.

Mr. FRANK.—You do not want the record encumbered with anything I say.

Mr. McCLANAHAN.—Now, make your objection.

Mr. FRANK.—I have made it. [1327—1239]

(Testimony of Richard W. Curtis.)

Mr. McCLANAHAN.—Q. Now, answer the question.

A. Well, Mr. Putzar was the man that was keeping time on the steamer “Hilonian,” working for the Matson Navigation Company at that time.

Q. Now, with that in mind, have you any reason to offer why he did not sign the original sheets in the time-book from the 17th of September to the 24th of September?

A. I did not inquire into his reason. I got my original—I got my sheets or my record that he handed over to me signed, and I did not inquire into the manner that he kept these duplicates. I never saw this form of book. I did not inquire into it; that is his business.

Q. Bearing in mind that when you said duplicate you are referring to the reverse side, I am referring to the original or printed side where his signature appears.

A. I did not pay any particular attention to the reverse side on the sheet. What I did want and what I did check and what I received his signature for is for the list of the men and the hours worked on the face of that sheet.

Q. Now, Mr. Curtis, we will call your attention to the sheets of September 17th to 24th, appearing in your writing; will you please make again your explanation of why that happened?

A. Mr. Putzar had gotten behind in his timekeeping, that is in so far as transcribing, writing up the different sheets is concerned, transcribing the cards

(Testimony of Richard W. Curtis.)

on to these sheets. The cards were delivered to him every day; we called upon him every day in regard to the time and he said it was correct, that he had checked up his own time but that he had not time to transcribe it on to the sheets. I visited him several times and asked him for them as we needed the cards for our payroll. [1328—1240]

Q. Was this at the end of the work?

A. This was, well, at a time prior to the end of the work. Off and on I visited him several times; as I stated I could not tell you the exact date I visited him.

Q. Several times after the 17th of September?

A. Yes. I believe the last time that I visited him he said, "Well, I will get these days' time in, check it up and then I will transcribe it on to the sheets; the time is correct."

Q. What day was that?

A. I could not tell you the exact date.

Q. It must have been at the end of the work?

A. It was at the end of the work.

Q. It must have been at the end of the work?

A. Yes.

Q. All right; go on.

A. And so I told him that would be satisfactory, but I must have the cards or there would be no pay-day. So the following day, or later that afternoon, I cannot recall the exact hour or day,—it is two years hence,—he brought the cards up to me; and I was in the San Francisco office at that time—he brought the cards up to me and he had these cards segregated

(Testimony of Richard W. Curtis.)

in classifications; that is, he had one reverse to the other; and he brought his book to me and he asked me to take the cards as they were and not to disturb them, as he had checked them up with his handbook, and he wanted me to act as the clerk to transcribe those on to the sheets. Well, after I had transcribed them, it might have been later on in the day that I finished or the next morning, he called again at the office; he demanded the time-cards and this book and took it away with him; probably the next morning or the next afternoon, I could not say the specific hour or day he returned the cards as they originally were in the classification [1329—1241] in the book. I checked it up with my sheets. Then he called and got this book and signed it up.

Q. He called and got the book and signed up the backs of the sheets?

A. He signed these sheets; yes.

Q. In your presence?

A. He signed them in my presence, yes.

Q. How did you account for the fact that he executed this number on the original printed side?

A. He took them to a separate office and sat down and signed it. He said, "I will sign those sheets for you now," and I don't know what he did with the sheets or how he signed the sheets or what he did with the sheets in this bound book here.

Q. I thought you said that he signed the sheets in the bound book.

A. I know. But I say I do not know in what manner he signed them, that is the actual performance

(Testimony of Richard W. Curtis.)

of the thing. I know he was signing the sheets as he told me he would sign the sheets for me, but I did not look into this book after he turned these sheets over to me.

Q. You also said he signed it in your presence.

A. What I mean in my presence is it was within a distance of three or four feet from me.

Q. So that Mr. Putzar from the 17th of September to the 24th of September had failed to enter up the time in his time-book?

Mr. FRANK.—Make a distinction between the time-book and his time-book, so that we do not get them mixed.

Mr. McCLANAHAN.—I am talking about the time-book.

Mr. FRANK.—You mean his own private time-book.

Mr. McCLANAHAN.—Mr. Frank, you can clear that up on redirect examination; if the witness is not clear on what I mean I will certainly make the question clear to him. [1330—1242]

Mr. FRANK.—There is no necessity of my clearing it up on redirect examination. The witness is entitled to know and I am entitled to understand what you mean when you ask a question at the time it is asked.

Mr. McCLANAHAN.—Let the Reporter read the question and see if it is not perfectly intelligible.

Mr. FRANK.—We are wasting a great deal of time and you are insisting upon having your own way. What I want to know is, when you use that

(Testimony of Richard W. Curtis.)

word, do you mean this book here that you have before you, or do you mean Mr. Putzar's private book?

Mr. McCLANAHAN.—Mr. Frank, the record shows a clear distinction between the two. One is referred to as his handbook; the other is referred to as the time-book; and there is no possibility of mistake.

Mr. FRANK.—Very well. You mean not his private book but you mean this book; that is what I want to get at.

Mr. McCLANAHAN.—I mean what you have said. Read the question. You will find that is just what I said.

(The last question repeated by the Reporter.)

A. Yes, he has failed to do so, if you call this the time-book, if you have given it that distinctive name; but he had a handbook.

Mr. FRANK.—What is the use of going into that?

Mr. McCLANAHAN.—I object to the witness taking your cue.

Mr. FRANK.—The witness has a perfect right to make himself definite, as you are bound to make yourself definite in your questions. I don't want to get any matter into this record that I will have to fight with you about after the witness is gone.
[1331—1243]

A. The timekeeper would, as a general rule, and what in my practice and experience has been his handbook is his time-book, and the sheets that they make out is a resume of the time after it is checked over.

(Testimony of Richard W. Curtis.)

Mr. McCLANAHAN.—Q. I see. Well, now, all through this examination of Mr. Curtis, I want to make the distinction between the time-book and the handbook as I have done heretofore. You will understand that, will you?

A. Well, his handbook is the book he kept the time in every day, and this is the resume of the time.

Q. We will call that his handbook, as we have in the past, and we will call this his time-book, as we have in the past, so we will make no mistake or have no misunderstanding. Mr. Putzar having neglected to enter the time in his time-book, he requested you to do it for him? A. Yes, sir.

Q. And you did it for him?

A. Yes, I wrote out those sheets.

Q. And that was done after the work on the “Hilsonian” was finished? A. Yes.

Q. Now, Mr. Curtis, are you prepared to vouch for the correctness of the time-book sheets that have been introduced here as Exhibit 3?

Mr. FRANK.—He has already told you that he has checked them up and that he accepted them from your man as a correct statement of the time; he is not called upon to vouch for them, Mr. Putzar vouched for them.

Mr. McCLANAHAN.—Q. What have you got to say about that, Mr. Curtis?

A. This is a final settlement between the time-keeper on the ship and myself as to the time used aboard the ship. [1332—1244]

Q. And of course it is correct or you would not

(Testimony of Richard W. Curtis.)

have charged it?

A. It is correct, to the best of my knowledge, to the best of my ability.

Q. Mr. Curtis, did you from those time-book sheets make out the bill in this case?

A. Yes, sir, I did.

(A recess was taken until 2 P. M.) [1333—1245]

AFTERNOON SESSION.

Mr. McCLANAHAN.—Read the last question, Mr. Reporter.

(The last question and answer repeated by the Reporter.)

Q. That is from the sheets turned over to you by Mr. Putzar? A. Yes, sir.

Q. Now, Mr. Curtis, will you please tell me exactly how you did that,—you got the sheets before you and you were making out the bill; how did you do it?

A. I drew up on a piece of paper the different classifications of labor.

Q. As shown by the sheets?

A. As shown by the sheets. And then I took and called it off on to this sheet, you see.

Q. That is, you took the time-sheet and checked into the classification the number of hours shown?

A. Yes, that is, called it off on to the sheet.

Q. By calling off you mean checking into?

A. Checking into; yes.

Q. And then you totalled up the hours?

A. Yes, sir.

Q. And that total went into the bill?

(Testimony of Richard W. Curtis.)

A. Yes, sir.

Q. For instance, on the sheet which you drew off for the purpose of classification, you had machinists, machinists' helpers, and so on, at the top?

A. Yes, sir.

Q. And then when you ran across the work shown on the time-book sheet of machinists you would put down that work in that column, the hours?

A. I would put down the number of hours.

Q. Would you put down the dates on which those hours occurred? A. Oh, no.

Q. You simply put down the hours?

A. Just the concrete, the lump sum of segregations of those, that is all.

Q. Well, by a lump sum segregation you mean you took and put down the number of hours worked by each mechanic shown on each sheet?

A. No, no. I would not do it that way; I would take the sheet and, for instance, you had— [1334—1246]

Q. (Intg.) Take the sheet of the 23d of August, for instance. Let us see how you did it.

A. I would just take and I would check down the number of hours, say supposing we are taking it for machinists, as the first classification, I would take and check down—we had a certain number of machinists—and then I would put my rule there and I would add that up and I would call that off on the sheet.

Q. And so with the iron workers and helpers, etc.?

A. Yes, sir.

(Testimony of Richard W. Curtis.)

Q. And the sum total of the hours under that classification was put into the bill? A. Yes, sir.

Q. Where did you get the classification from, from the sheets? A. From the sheets, yes.

Q. Now, are you sure of that, Mr. Curtis?

A. Yes.

Q. You are sure of that, are you? A. Yes.

Q. Did you have nothing else to assist you in drawing the bill except these time-sheets?

A. That is all.

Q. And the bill was intended to be an exact resume, as we may call it, of the sheets themselves?

A. Yes, intended to be. Of course, you know it was never checked, although we offered to check it with the Matson Navigation Company for any clerical errors, but that was never done.

Q. That is, the sheets have never been checked with the bills since the bill was made out?

A. No, not with the Matson Navigation Company.

Q. Have you checked it at all?

A. I have partially checked it, yes.

Q. When? A. Here, a couple of days ago.

Q. Had you done it before that?

A. I had done it to make up the bill, yes.

Q. I mean after making the bill up had you checked the bill [1335—1247] up with the sheets prior to two or three days ago?

A. No, I had not.

Q. So since making up the bill you have checked the sheets and the bill but once? A. Yes.

Q. That is, two or three days ago? A. Yes.

(Testimony of Richard W. Curtis.)

Q. Did they check up two or three days ago?

A. No, there is a slight difference in the sheets.

Q. What is the difference that you found?

A. Well, I don't remember the exact total of the difference; I did not finish completely the checking up, I just went over it once, and I have not made a complete checking of it yet.

Q. Did you do this checking up two or three days ago for Mr. Frank?

A. I started to check it up to make a resume of it, yes.

Q. For him? A. Yes.

Q. And you have not finished that work?

A. I have not; no.

Q. How far did you get with it?

A. Well, I just went over it once, I had not checked it completely, I have not gone into it in detail.

Q. And you have not now in mind any errors that you found?

A. Oh, there is a difference, yes—there is a difference, I believe, between the machinists and the helpers.

Q. Which is correct, the sheets or the bill?

A. The sheets are correct.

Mr. FRANK.—You can check them up yourself, Mr. McClanahan, just as easy as we can—no doubt you have done it.

Mr. McCLANAHAN.—What has that got to do with this cross-examination?

A. You are liable to make errors, calling it off,

(Testimony of Richard W. Curtis.)

checking from one sheet to another, there is so many classifications. [1336—1248]

Q. Look at the sheet of August 23d. A. Yes.

Q. That sheet was incorporated into your bill rendered in this case? A. Not all of it.

Q. What was it of that sheet that was not?

A. The time from 107 to 185—that is, the workmen's number.

Q. Number 107. You mean 101, don't you from Hurley, the foreman? A. From 101 to 185.

Q. Why was that? You say that was not included in the original bill? A. No, sir.

Q. Why not?

A. Because it does not pertain to the list time and the material work on "Hilonian."

Q. You say that the time shown on that sheet of August 23d, from 101 to 185, that is for the first six men is not "Hilonian" work?

A. It is "Hilonian" work on the donkey boiler.

Q. Well, why didn't you charge us for that?

A. That was on an agreed price; we had a contract to do a certain amount of work on that donkey boiler.

Q. That was a contract, was it? A. Yes, sir.

Q. Please produce the contract. Have you it?

A. I have not.

Q. How much was it for?

A. I could not tell you offhanded. I don't remember.

Q. Mr. Putzar evidently did not know of that contract?

(Testimony of Richard W. Curtis.)

A. Mr. Putzar knew all the contracts on the job.

Q. Well, was he keeping time on the contract jobs as well as on the— A. (Intg.) No, he was not.

Q. Well, then, why did he keep the time on that— do you know?

A. I don't remember. I don't recall those circumstances very well, but I recall this, that he would not allow that time.

Q. He would not allow that time?

A. He marked it off on his [1337—1249] sheets, yes.

Q. On what sheet did he mark it off?

A. On this sheet.

Q. I show you the sheet of August 23d, found in the time-book of the Matson Navigation Company and ask you if the donkey boiler work is marked off on that sheet.

Mr. FRANK.—We object to that as incompetent and immaterial. We have got nothing to do with your own timekeeper, or with your own time-book. All we are interested in is what he passes in and allows, and what we put in our bill; and it shows on the face of it that he has crossed it out and not allowed it on our sheets. If he forgot or failed or neglected to cross it out on this, it cuts no figure in this case whatsoever, it is immaterial and I object to it.

Mr. McCLANAHAN.—Answer the question.

A. What is the question?

(The last question repeated by the Reporter.)

Mr. FRANK.—And the further objection, that the

(Testimony of Richard W. Curtis.)

sheet speaks for itself. If you want to introduce it in evidence, you can.

A. No, it is not marked off on that sheet.

Mr. McCLANAHAN.—Q. Do you know why it was not? A. No, sir.

Q. Are you clear in your mind now that Mr. Putzar marked it off on your sheet? A. Yes, sir.

Q. When did he do it?

A. At the end of the following day.

Q. That would be the 24th of August?

A. The 24th of August.

Q. Are you sure of that?

A. I am sure of that; yes.

Q. As a matter of fact, Mr. Curtis, don't you know that Mr. Putzar did not go on that job until the 25th or 26th of August?

A. I don't remember whether the 24th or 25th or 26th of August. I do remember that Mr. Putzar was there the first day the boat went over.

Q. You are sure of that, are you? A. Yes.
[1338—1250]

Q. You think he was there when the work shown on that sheet of August 23d was performed?

A. To the best of my knowledge, yes.

Q. What does your knowledge consist of?

A. You are asking me to remember a whole lot of details about two years back, and I have handled a great many of these sheets in the same manner since then.

Q. Well, now, you don't have to tax your memory for two years on this proposition, do you?

(Testimony of Richard W. Curtis.)

A. No. When you bring up a little detail as to the method, the manner in which these disputes arose, why, I can't give you the exact detail; they come up at the time and I pass them off my mind; I do not carry them around with me.

Q. Do you think the fact as to whether Mr. Putzar was there on the first or second day that work was done on the "Hilonian" is a matter of detail?

Mr. FRANK.—I object to that. I will have to instruct the witness not to answer all of this class of questions.

Mr. McCLANAHAN.—Do you instruct the witness not to answer that question, Mr. Frank?

Mr. FRANK.—Yes.

Mr. McCLANAHAN.—Q. Mr. Curtis, will you answer the question? I am trying to get at your idea of what you mean by detail.

A. Of what?

Q. Of what you mean by detail.

A. By detail—well, I do know that he crossed these off, this time off. Now, I do not know at what time he did it or at what particular moment, I can't remember.

Q. When did you learn of this donkey boiler contract—did you see the contract?

A. I had a list of what was agreed to be done under set figures of the work.

Q. What was the number of the donkey boiler contract? [1339—1251]

A. I could not recall it offhanded.

Q. Please furnish me with that number, will you,

(Testimony of Richard W. Curtis.)

at a later time. I have asked you for certain time cards, too; do not forget those. You gave that donkey boiler contract a number, did you?

Mr. FRANK.—One moment. I would like to know the purpose of the inquiry into the donkey boiler contract. It is not in the bill. It is not charged up against you, and it is utterly immaterial, and until I can ascertain the purpose of it I decline to go into it any further.

Mr. McCLANAHAN.—You decline to allow me to go any further?

Mr. FRANK.—I want to know what the purpose of it is, so I can determine its materiality; as it stands, it is immaterial.

Mr. McCLANAHAN.—The only answer I can give, or will give, to that, Mr. Frank, is that it is proper cross-examination. This Curtis Exhibit No. 1 contains the donkey boiler work. It contains a number appearing on the time-book, under the donkey boiler, 5297. Now, I have a perfect right to follow that up and find out all the details, how it happened that it had No. 5297 or whether that was the correct number.

Mr. FRANK.—As long as it is not charged up against you and not in this business at all, I can't see the materiality of it.

Mr. McCLANAHAN.—I will make you see it.

Q. You gave the donkey boiler a contract number, a job number?

A. I gave all the contracts a job number.

Q. What other contracts were there at this time

(Testimony of Richard W. Curtis.)

entered into between the Matson Navigation Company and the United Engineering Works?

A. I can't recall them all at the present time; I don't remember them.

Q. There were a number of them, were there?

A. There were [1340—1252] several of them, as I understand.

Q. Carried on contemporaneously with this work for which there was no contract? A. Yes, sir.

Q. Let me refresh your memory. Was there a circulating pump contract?

A. There was a circulating pump contract, yes.

Q. Carried on at the time this work was carried on?

A. No; the circulating pump contract, I believe, to the best of my knowledge, was completed prior to the time this work was done.

Q. Would you want to swear to it?

A. No, because I don't remember.

Q. Was there a Howden force draft contract?

A. I believe there was.

Q. Was that being carried on at this time?

A. Yes, I believe it was.

Q. What was the number of the circulating pump contract? A. I don't remember.

Q. Please furnish that. What was the number of the Howden force draft contract?

A. I don't remember.

Q. Please furnish that. Mr. Curtis, in checking over the time-books sheets which have been marked your Exhibit No. 3 with the bill which is numbered

(Testimony of Richard W. Curtis.)

Schedule 1 in this case, with reference to the classification, did you find any material difference?

A. There is a difference in the hours.

Q. I am not referring to the hours.

A. In the classification?

Q. Yes, the kind of labor. A. No, sir.

Q. No difference. You are sure of that?

A. Yes.

Q. Mr. Curtis, the time-book sheets, which is your Exhibit No. 3, contain charges made on every day except three for the work of electricians and your bill, Schedule 1, makes no charge [1341—1253] for electricians. Can you explain that?

A. An explanation to that is that we always charge electricians under the head of machinists.

Q. Machinists? A. Yes.

Q. So in this case the electricians were all charged under the head of machinists?

A. Yes, it has always been the custom.

Q. Irrespective of the custom, it is done in this case? A. Yes, it was done in this case.

Mr. FRANK.—Not irrespective of the custom but just because it is the custom.

Mr. McCLANAHAN.—Q. Mr. Curtis, there appears in the time-books for every day but three the work done by riggers, and I find no such classification on your bill. Can you explain that?

A. Well, it is under the head of helpers.

Q. Riggers comes under the head of helpers?

A. Yes.

Q. What kind of helpers?

(Testimony of Richard W. Curtis.)

A. Well, we class all our helpers together under one heading, just helpers.

Q. You did not in this bill. You have in the bill machinists' helpers and you have steam and pipe fitters' helpers.

A. Well, I mean the ordinary helper.

Q. Now, in this particular case, under what classification did you lump the riggers in making out the bill?

A. I lumped the riggers under the heading of helpers. Those helpers are also machinists' helpers and whatever they may be required to do all over that ship; they are called upon to do various things and they go under the head of helpers.

Q. But your bill segregates them?

A. Well, they are not working with one particular mechanic continually; you know what I mean is a steam-fitters' helper is segregated from an ordinary helper that would be called upon to do various things all over [1342—1254] the ship. A steam-fitter's helper will only help a steam-fitter, as a general rule.

Q. Those riggers, then, were classified by you under machinists' helpers?

A. Under the word "helpers."

Q. Helpers?

A. Well, they helped the machinists and they helped the iron workers, too; they work all over the ship, wherever required.

Mr. FRANK.—They are not marked there machinists' helpers at all.

Mr. McCLANAHAN.—Not marked so in the bill?

(Testimony of Richard W. Curtis.)

Mr. FRANK.—No.

Mr. McCLANAHAN.—Turn to Schedule 1, Mr. Curtis. Now, looking at that bill, under the ship's time, did you not intend to charge the Matson Navigation Company with 10,027 hours for helpers and refer to them as machinists' helpers? A. No.

Q. Why did you make a distinction then between those helpers and steam-fitters' helpers?

A. The reason is that, that those helpers are required to do all classes of work.

Q. What helpers are you referring to now?

A. Those charged under the word "helpers" here, 10,027 hours.

Q. That class of helpers?

A. That is what I am referring to.

Q. What about the other?

A. The steam-fitters' helpers I am referring to are helpers that help the steam-fitters.

Q. And are a distinct class in themselves?

A. Are a distinct class of helpers; that is, they belong to that trade.

Q. Now, did you charge these riggers or classify them under that latter class of helpers, steam-fitters' helpers, or did you classify them under the class helpers generally?

A. I classified them under the term "helpers" generally.

Q. That is what I wanted to know. That is, the riggers' time [1343—1255] on this bill is included in the 10,027 hours? A. Yes, that is right.

Q. The time-book sheets make a distinction be-

(Testimony of Richard W. Curtis.)

tween steam-fitters and steam-fitters' helpers, and pipe-fitters and pipe-fitters' helpers. I suppose you in the bill lump those two classifications as steam-fitters.

A. Steam-fitters. That is the proper term.

Q. Can you think now of any other discrepancy or difference between Schedule 1 and the time-book sheets as disclosed by your checking up of a few days ago?

Mr. FRANK.—I object to that as assuming that there are discrepancies between the two.

A. No, I cannot.

Mr. McCLANAHAN.—Q. What is that?

A. I do not remember of any detail, no.

Q. Let me see if I can help you out on that. I believe you said that you are quite sure that the bill purports to be a reproduction made from the time-book sheets?

A. Yes, inasmuch as I made a draft of the time off the time-book sheets. I might have made mistakes; that matter is open to error.

Q. Will you turn to your time-book sheets of September 17, the last page of that date; did you make a mistake when you incorporated that page which purports to set forth work done under 5295 in your bill?

A. I can't recall on the work on this sheet now so far as the items or anything in it is concerned on the sheet.

Q. Well, that sheet was incorporated in that bill, was it not? A. Yes, sir.

(Testimony of Richard W. Curtis.)

Q. And I ask you if you did not make a mistake in so doing.

A. No. To the best of my knowledge, no.

Q. Now, will you please turn to the first sheet on that same [1344—1256] date, September 17; have you got it? A. Yes.

Q. Do you not recognize that there is a duplication of the time charged under 5295 on that sheet? In other words, 5295 on the first sheet shows precisely the same number of men, the same number of hours, the same classification, as the sheet which you first had your attention called to.

A. I cannot recall that now, only I do know that the time that was made up, why, we checked it over and found it correct. I don't know under what conditions the men worked, to pass upon that thing now.

Q. Mr. Curtis, do you fail to recognize that there is a duplication of a charge there?

A. I couldn't say that there is.

Q. That is, you fail to recognize it?

A. Yes, I fail to recognize it.

Q. On what ground? What is your reason for failing to recognize a duplication of charge? The men's names are the same, are they not?

A. The men's names might be the same but they might have worked a day and then the night, and then they might have been divided.

Q. Don't you recognize, Mr. Curtis, that there appears on September 17 night work?

A. Yes, I see that there is night work.

(Testimony of Richard W. Curtis.)

Q. What is your explanation that this duplication, seemingly duplication, comes under night work?

A. I can't recall it now, as to what that is, clearly. It depends upon how they split the gang up. I could not tell you unless I was right there at the time how the gang was split up. You see, they might have worked all day and split up at night.

Q. What do you mean by split up?

A. I mean start them again at night; that is what I mean.

Q. Would you even suggest that these men would work as shown on the first sheet for the time that they worked on that sheet, [1345—1257] and then again at night work for the same time?

A. Yes, I have often seen that.

Q. How would you account for the men working ten hours straight time in the morning and being credited with ten hours straight time, and in addition being credited with two hours overtime, and then at night the same men being credited with ten hours straight time and two hours overtime? How do you explain that?

Mr. FRANK.—I object to that. The witness is not called upon to argue the matter. He has testified that he checked it up at the time and that it was agreed between him and Putzar at the time it was correct, and unless he has a recollection upon the subject, I think he is not called upon to argue with you the possibilities or probabilities. If it is a duplication, Mr. Putzar is at your command any

(Testimony of Richard W. Curtis.)

time to straighten it out for you; he is your man.

A. I do not know, because I can't recall the thing, the incident, at all. And just as I stated before, it is how they split the gang up, I would not know.

Mr. McCLANAHAN.—Q. Mr. Curtis, that would be impossible, would it not? A. What?

Q. For men to work twenty hours straight time in one day?

A. If they were working the day and the night.

Q. Is that your serious answer?

A. I don't know, I can't recall it. I don't know under what conditions they worked.

Q. I am not asking you to recall anything. I want to know whether it is your serious answer that a man can work twenty hours straight time in one day.

Mr. FRANK.—I instruct the witness he is not called on to argue the thing with the counsel at all. The witness is to testify to facts; if counsel wants to argue it he can argue it himself.

Mr. McCLANAHAN.—Q. Answer the question, Mr. Curtis. [1346—1258]

A. I have seen men work all day and all night.

Q. True. But I am asking you if it is your serious answer or suggestion that a man can work twenty straight hours in one day.

A. I have seen men work twenty-four hours.

Q. Well, now, I have used—

A. (Intg.) That is night and day.

Q. I have used the word "straight" in its techni-

(Testimony of Richard W. Curtis.)

cal sense. You understand the difference between straight time and overtime, don't you?

A. I understand.

Q. That is what I refer to. Can a man work twenty straight-time hours in one day?

A. Well, what do you consider a day?

Q. Twenty-four hours.

A. I have seen men work twenty-four hours, a day and a night.

Q. That is not an answer to my question, and you know it, Mr. Curtis.

A. I have not seen a man work twenty hours in a day—what I consider a day is from 7 o'clock to 5 o'clock.

Q. On one single day of twenty-four hours, is it possible for a man to work twenty straight hours, using the word "straight" in its technical sense as distinguished from overtime?

A. Oh, twenty straight hours?

Q. Yes. In other words, after a man has worked ten hours straight time, isn't all the time that he works over that in one day overtime?

A. Yes.

Q. Will you turn to the sheet of August 26th, the night sheet of that date? You have it, have you, Mr. Curtis? A. Yes.

Q. I want to call your attention to an error that appears on that sheet and ask you if you have discovered it—have you discovered any error there?

A. Yes. I see there is five men, six helpers—there is time for five of them, I believe.

(Testimony of Richard W. Curtis.)

Q. You discovered that, did you?

A. I knew that at the time; yes. [1347—1259]

Q. Did you charge us with five or six?

A. Just for the five.

Q. With the five? A. Yes.

Q. Will you just turn to August 29th on your time-book sheets which have been marked your Exhibit No. 3?

A. Which sheet do you want?

Q. I call your attention to the word "night," which seems to be an insertion on the first page which you have numbered 13, and ask if you have put that word "night" there?

A. I did, yes, when I was checking up with the bill, I did that.

Q. I call your attention on the same page lower down to the word "night" dittoed twice; did you do that? A. Yes.

Q. What for?

A. When we were checking up the time-cards.

Q. When "we were." Who is "we"?

A. I mean the clerk and I were checking up the time-cards just as a matter of information.

Q. I thought you had checked up the time-cards with Mr. Putzar before.

A. I mean these sheets; excuse my mentioning these time-cards; I mean these sheets.

Q. When you were checking up these sheets with what? A. To make out the bill.

Q. What were you checking them up with?

A. With the time-cards.

(Testimony of Richard W. Curtis.)

Q. Had you not checked up the sheets with the time-cards before you made out the bill or before you commenced to make the bill?

A. To explain these marks on these, after the bills had been rendered to the Matson Navigation Company there was a talk about making a segregation, and we tried to make a segregation and these marks that you see here are in our endeavors to make a segregation.

Q. Where did you get the data that prompted you to put this word "night" on that sheet in two places?

A. Well, it was, you [1348—1260] might say, a guess at it, because it was some time after the work was done.

Q. What was it put there for? What was the word put there for?

A. Well, I couldn't recall the exact reason it was put there for. We were trying to make a segregation. I can't recall that now. It has been some time ago.

Q. You told me originally that the word was put there when you were making out the bill.

A. Well, what I meant to say was the Matson Navigation Company wanted a segregation, you understand, and my intentions were to go over it and try to make out a segregation, make out new bills.

Q. I do not quite follow you. What is the placing of "night" on day work? How is that going to make out a segregation?

(Testimony of Richard W. Curtis.)

A. Well, I do not recall the exact incident or why I put that on there; it is two years ago, and I don't remember.

Q. Well, all right; we will pass that for the present. Turn to the sheet of August 30th. I will call your attention to the word "housing," the word "eng." followed by the word "housing," following by the word "eng.", and ask you if you did not put that there? A. Yes, sir.

Q. What for?

A. We were trying to make a segregation.

Q. On the same occasion?

A. The same occasion.

Q. Can't you make that a little clearer? Where did you get your data from that you used in putting those words there?

A. We went to the men that worked on the job and tried to get them to remember what part or piece they worked on those days.

Q. When did you do this?

A. That was after the bills were in, the job had closed, and after they were in the Matson Navigation Company's office, the bills were sent in.

Q. That was some months after?

A. It was some months after. [1349—1261] They wanted a segregation.

Q. Wanted a segregation of what?

A. Wanted a segregation to see if we could segregate the work that was done in addition to the list or the changes from the list.

Q. That is, they wanted a segregation from the

(Testimony of Richard W. Curtis.)

original specification?

A. Well, the list—I don't know whether it was the specification or not.

Q. The original list? A. The list; yes.

Q. The Matson Navigation Company wanted you to take Schedule 1, containing the long enumeration of work done, and have you take out of it the items of labor and material that did not appear in the original list? A. Yes, sir.

Q. And that you attempted to do?

A. We attempted to do.

Q. In the way that you have suggested?

A. Yes, sir.

Q. Did you fail? A. We did fail; yes.

Q. And you went at it in the way suggested by going to see the men and asking them if they could remember the work?

A. Yes. That was three or four months after that, if they remembered the exact detail that they did or performed.

Q. All right. I will return to that in just a moment. While I am on that subject, however, I will ask you were the time-cards destroyed at that time?

A. Well, we didn't pay any attention to the time-cards that I can remember. I don't remember whether we did check up with the time-cards. The time-cards did not contain all the details.

Q. That is not an answer to my question. Were the time-cards destroyed at that time?

A. I don't remember whether they were all

(Testimony of Richard W. Curtis.)

destroyed or not—some parts there were—I don't remember whether *there* were or not. You are asking me of details for two years back. It is pretty hard to remember these things. [1350—1262]

Q. I call your attention to the sheet of September 1, your number 21, and ask you if you can explain the change in the hours there after the operator whose number was 357, and who was a machinist's helper working on the shaft.

Mr. FRANK.—What is the change? What change do you refer to?

Mr. McCLANAHAN.—Just what I said.

Mr. FRANK.—What is the change?

Mr. McCLANAHAN.—Don't you recognize that there is a change there?

Mr. FRANK.—I want to know what change you are referring to.

Mr. McCLANAHAN.—I am referring to the change in the hours worked opposite that number.

Mr. FRANK.—I do not see any.

Mr. McCLANAHAN.—If there is no change there let the witness say he sees no change.

Mr. FRANK.—Is that so? But you say there is a change. He is entitled to know what that change is.

Mr. McCLANAHAN.—On its face it shows a change. That is as definite as I can put it.

Mr. FRANK.—It is not.

Mr. McCLANAHAN.—I beg your pardon.

Mr. FRANK.—You can refer to what you consider a change and let it go into the record so that

(Testimony of Richard W. Curtis.)

the Court will know what you are talking about.

Mr. McCLANAHAN.—Mr. Curtis, can't you answer the question?

A. I see opposite No. 357 a ring running around the hours overtime and the figure 10 placed there above the 18.

Q. How much overtime does that sheet now show for that man? Any? A. No.

Q. How much overtime have you allowed in the bill?

A. None. I have charged the straight ten hours.
[1351—1263]

Q. Charged the straight ten hours?

A. Yes.

Q. You remember that, do you? A. Yes.

Q. Is that the reason you put the ten in the circle there?

A. I did not put the 10 there that I know of. I can't recall the 10 being put there by me.

Q. But you can recall that you did not charge the 18 hours which is shown in the total column?

A. Certainly, because it is struck out; it has a ring around it.

Q. Mr. Curtis, I call your attention to the second sheet of September 1, which is numbered 22 by you, and ask you if you added to that sheet, at the bottom, "one air tool, 10 hours." A. Yes.

Q. Why?

A. Well, when we were trying to make a segregation I placed that down there at that time so as to

(Testimony of Richard W. Curtis.)

have it before me when I was going through the sheets.

Q. When the Matson Navigation Company asked for the segregation?

A. Yes. You see that it calls for the iron worker and the air tool for scaling.

Q. Was this 10 hours included in the bill?

A. The 10 hours is just the operator, and the air tool is charged for 10 hours.

Q. I am asking you if the air tool which you have placed on that sheet was included in the bill.

A. It is included in this item here.

Q. Up above?

A. That was put down as a mere check for the upper figure.

Q. A check in what way?

A. The number of hours of the air tool, the operator was running that air tool.

Q. Did that show on the original entry?

A. Well, it did in a way, and in another way we put it down there so that we could check back on it; we were making a segregation at that time.

Q. By the way, what became of the segregation that you were [1352—1264] making?

A. I did not complete it.

Q. Why not?

A. Well, I could not complete it.

Q. Perhaps you went at it wrong.

A. You will have to show me.

Q. I call your attention to the sheet of September 1 at night, being your sheet No. 23, and ask you if

(Testimony of Richard W. Curtis.)

you inserted the word "housing" there?

A. Yes, sir.

Q. For the same purpose?

A. For the same purpose.

Q. And you secured the data in the same way from the men?

A. Yes, sir. They said, "Well, I guess that I worked a certain length of time on it."

Q. On what?

A. On that housing—on that part that I inserted in there.

Q. The time-card shows that it was an engine that they had been working upon.

A. Well, they were working on the housing of the engine.

Q. The housing of the engine? A. Yes.

Q. How was that to be segregated? From what was that to be segregated? What is the difference between working on the engine and on the housing for the engine? One under a contract and one an extra?

A. No, it was not. One was on the list and one was not.

Q. What was on the list?

A. Well, I can't recall now; it is two years ago. I know that there were changes from that list and we were trying to arrive at a segregation of those changes.

Q. I call your attention of September 3d, your No. 28, and ask you if you inserted on that sheet in the numerous places the job number 5325.

(Testimony of Richard W. Curtis.)

A. Yes.

Q. When?

A. When we were trying to make the segregation.

Q. Why did you insert the job No. 5325 there?

A. Well, we used these numbers as a matter of convenience, to try and use it numerically wherever you could handle your time or numbers so that [1353—1265] it is better and easier for you to make a segregation, could refer to them as numbers instead of making a division, and then you go through it again and check it up.

Q. So that there was a certain class of work commenced on the “Hilonian” that would come under job No. 5325; is that right?

A. This segregation that I was using these numbers 5325 for was altogether independent of the number that was originally put in; that is, I mean like trying to make a segregation for 53 through 5325—

Q. (Intg.) Will you please answer my question? 5325 was the number which was given to work to be performed on the “Hilonian”? A. Yes, 5325 was.

Q. And your explanation of the next sheet of September 3d at night for the insertion of the 5325 is the same, is it? A. Yes, it is the same.

Q. And it is the same for September 4th, is it?

A. Yes, sir.

Q. The daytime, your sheet No. 30? A. Yes.

Q. And for your sheet No. 31, September 4th, at night? A. Yes.

Q. And for your sheet of September 5th?

A. Yes, sir.

(Testimony of Richard W. Curtis.)

Q. And the 6th; is that right?

A. The 5th and 6th, that is correct.

Q. And the 7th? A. Yes, sir. [1354—1266]

Q. And the 8th? A. Yes, sir.

Q. And the 9th? A. Yes, sir.

Q. And the 11th? A. Yes, sir.

Q. And the 12th? A. Yes, sir.

Q. I call your attention again to the sheet of September 11th, where you have inserted the number 5295 under the original number as shown by the bill, 5325. Can you explain that?

A. I did that for the purpose of trying to reach a segregation.

Q. That is, you found that the work under 5325 as shown on that sheet, came under the original specifications or list of work?

A. No, sir, not in the manner. What we did do was to try and take each paragraph in that bill and put it under one number, and the others under another number, so as to try and get a separate charge for each item.

Q. I call your attention to the sheet of September 17th, your number 71, and ask you if you added the word "foreman." A. Yes, sir.

Q. After the operator, number 5325?

A. Yes, sir.

Q. Why?

A. Because he was the foreman on the night shift.

Q. How were the foremen of the United Engineering Works at that time paid?

Mr. FRANK.—That is immaterial. It is already

(Testimony of Richard W. Curtis.)

admitted that the charges that were made for these different men were the correct charges for those different employments?

Mr. McCLANAHAN.—Answer the question.

A. The foremen were all paid by the hour, with the exception of a few.

Q. And they were paid how?

A. By the month, and then they were on a regular monthly salary, a certain average per month.
[1355—1267]

Q. What foremen were under regular salary?

Mr. FRANK.—This whole line of examination is objected to as immaterial.

A. I cannot recall now because some worked on time and have since been put on salary and *vice versa*.

Mr. McCLANAHAN.—Q. So you cannot segregate now the foremen that worked on the “Hilonian” under salary from those that worked on a day wage?

A. No, sir, not at the present time.

Q. By the way, Mr. Curtis, to change the subject, where did you look for those machinists that you testified to on your direct examination?

A. Where did I look for them?

Q. Yes. Did you look at any of the Machinists’ Unions for their address?

A. I looked to the walking delegates. I did not go direct to the union. We have the delegates around the shop. They told me where they were employed and I went to those places.

(Testimony of Richard W. Curtis.)

Q. You did not go to the headquarters?

A. A walking delegate generally has a list of men, where they go to.

Q. I thought I would give you the name and address of one of the men that I found myself.

Mr. FRANK.—Give it to us.

Mr. McCLANAHAN.—Mr. G. H. Dunn, who has lived for several years at 38 Helen Street in Oakland.

A. I spent considerable time looking these men up at night-time.

Q. You recognize, Mr. Curtis, that an operator is not entitled to overtime until he has worked his full straight time?

A. An operator is not, as a general rule.

Q. What is the exception?

A. There are exceptions when it [1356—1268] may have been agreed upon.

Q. Between whom, the man and the factory, or the shop?

A. The man and the factory or the man that owns the job or runs the job. Those things vary.

Q. Was there any agreement in this “Hilonian” job with reference to that matter?

A. I cannot remember any. I do not remember any.

Q. Are you aware that that time-book has innumerable instances where a man is allowed overtime before he has worked his straight time?

A. It may be.

Q. Are you aware of that?

A. I have noticed where men have been on the

(Testimony of Richard W. Curtis.)

night shift that some men have received overtime.

Q. Before they have worked their straight time?

A. They have worked straight time on some other vessel, or some other job, and been called on at night. Unless it is by agreement, if we force that man to work at night they would pay the overtime.

Q. So that when a man works on a ship other than the "Hilonian" his straight time during the day, and is put on the "Hilonian" at night, he is allowed overtime? A. He would be, and on any other vessel.

Q. And that overtime is charged in this bill to the Matson Navigation Company?

A. If such was the case it is. It would not be so unless somebody ordered it.

Q. Do you attempt to account for all of the overtime allowed on this bill where the man has not worked his full quota of straight time on that hypothesis?

A. I do not remember the conditions now, but at the time I knew they were right. I cannot recall the conditions now. [1357—1269]

Q. Don't you think that we are entitled to an explanation of that kind of charge?

A. The explanation was made and settled with the timekeeper, as it always is.

Q. Tell me now about it. What was it?

A. I do not recall the instance. I know all of the time is settled at the time with the timekeeper. These things are explained, and they agree. It has always been the custom.

Q. What thing is explained. This question of a

(Testimony of Richard W. Curtis.)

man working on another ship, and coming to the "Hilonian" and being paid overtime on the "Hilonian"?

A. I do not remember the exact details of that character. I do know if a man is ordered on a ship at night it is by somebody's orders that represents the ship.

Q. Would the timekeeper have any authority to order a thing of that kind done?

A. I do not go further than the timekeeper. I just deal with the timekeeper.

Q. What is your idea of the duties of a timekeeper on a ship?

Mr. FRANK.—I do not know that you should go into that, what the timekeeper's duties are.

Mr. McCLANAHAN.—I should like to have the witness testify.

Mr. FRANK.—What difference does it make what the timekeeper's duties are. He has told you over and over again the matter was gone over with the timekeeper and settled with him at the time. Do you expect to go behind the settlement made with the man authorized?

Mr. McCLANAHAN.—You expect us to pay this bill on that statement?

Mr. FRANK.—On the statement of your timekeeper that [1358—1270] it is right. If you do not do that what do you put a timekeeper on for?

Mr. McCLANAHAN.—We will explain what he is put on for.

Mr. FRANK.—It would be impossible to deal with

(Testimony of Richard W. Curtis.)

you folks under any circumstances if that is the case.

A. Well, the duties of a timekeeper are to keep the time in just as thorough a manner as he knows how, and to check up with the people that are doing the work for him.

Mr. McCLANAHAN.—Q. Anything else.

A. That is all; they handle the time.

Q. That is all?

A. They handle the time. That is, they check up the time and see the men are working on the ship, where they are, and where they come from, who they are, and how long they worked.

Q. Even according to your view of the duties of a timekeeper Mr. Putzar would have no right to enter into a contract by which he would agree to bind the Matson Navigation Company to pay overtime before the man had worked straight time on the “Hilonian”?

A. No, sir, I don’t know the authority of Mr. Putzar. I know he was timekeeper, and I do not go further than that.

Q. Without going in detail into the numerous instances found in the time-book where overtime is allowed, before the man has worked straight time, I will ask you if you recognize that the time-book does contain such entries?

Mr. FRANK.—The time-book speaks for itself.

A. I do not remember.

Mr. McCLANAHAN.—Q. You do not remember?

A. There are instances there that such is the case.

(Testimony of Richard W. Curtis.)

I could not recite them though to you. [1359—1271]

Q. That is all I ask you. Will you turn to the time-book sheet of September 16th. I call your attention to the sheet of September 16th, your number 67, and to the entry under job number 5325, of W. Ross, an electrician whose shop number is 322. The sheet calls for seven hours straight time. I call your attention to the next sheet, which your sheet number 68, under job number 5346, the same operator, W. Ross, whose number is 322, working 4 hours straight time, and ask you how you explain that.

A. I cannot explain that at the present time, but at the time this was made out and checked up I knew that to be right. Whether he divided that overtime or not is a small matter of extending an hour or two hours as overtime. The total number of hours is right.

Q. You remember that particular instance?

A. I remember that I checked all these sheets at the time. I did not split hairs whether a man extended an hour out in the overtime column or not.

Q. In making up the bill you gave that man credit for 11 hours straight time, did you?

A. I charge you with 11 hours as it reads there on the sheet.

Q. Straight time? A. Yes, sir, straight time.

Q. Now, will you turn to the sheet of September 23d. I call your attention of the sheet of September 23d, being your number 86, to job number 5396, where J. Hurley, foreman, is allowed 5 hours, and

(Testimony of Richard W. Curtis.)

C. Petersen, an iron worker, 5 hours, and ask you if you can explain why those were charged to the Matson Navigation Company?

A. I cannot recall that at the present time. I knew at the time that it was right. I could not tell you now the reasons for it. [1360—1272]

Q. You are sure that they were charged and are right? A. Yes, sir, they checked it up.

Q. Do you not recognize, Mr. Curtis, that 5396 is not a "Hilonian" number?

A. It may be that the number was placed wrong on the sheet. I did not check to that number in particular. I checked to the card.

Q. You made out the bills from the sheets, did you?

A. I did, yes. I charge you with that 5 hours foreman, and 5 hours for the iron worker.

Q. Even though the time-sheet shows that the work was done under a number that is not a "Hilonian" number? A. That is a small error; yes.

Q. What is an error? The charging or the placing of the number?

A. The placing of the number.

Q. Perhaps the charging is an error?

A. No, sir, that could not be, because we checked up personally.

Q. It is in your handwriting? A. Yes, sir.

Q. Turn to the sheet of August 23d. Do you know what the bilge injection referred to on that sheet is?

A. I cannot tell you at this time, no.

Q. Do you know what the bilge injection is?

A. I know what the bilge injection is, yes.

(Testimony of Richard W. Curtis.)

Q. Is it not connected with the circulating-pump?

A. Yes, sir, as a general rule it is.

Q. Is that a proper charge to be incorporated in schedule No. 1?

A. I could not tell you from the words "bilge injection" just what that man performs at the present time, just what work he did on that bilge injection. I knew at the time, and so did [1361—1273] your timekeeper when he checked it up. At the present time, after two years I cannot remember what were the duties performed in that bilge injection.

Q. Ordinarily, if there was work performed on the bilge injection, it would come under the circulating-pump contract, would it not?

A. No, sir, I do not remember as to the extent of that contract.

Q. I will ask you to produce it. We will see the extent of it when you produce it. Mr. Curtis, have you ever checked up the number of nights that work was done on the ship as shown by the time-sheets?

A. I do not remember as I did.

Q. You do not remember that you have done that?

A. No, sir, I have checked it in a general way. I do not know that I made a specific check right on the night. I have gone through the entire thing as a total.

Q. You would have to know the number of nights in order to make a charge for the power house, would you not?

A. Well, I would and I would not in this case, because there might have been nights that the night-

(Testimony of Richard W. Curtis.)

gang was not working at all. We were furnishing power to the ship.

Q. What for? A. For electric lights.

Q. For electric lights?

A. Yes, sir, and for the crew aboard the ship at that time; for the different members aboard the ship.

Q. That is a subdivision, is it?

A. No, sir, I knew at the time that she was being furnished with electric lights. I could not go into details now and tell you the reason why she was furnished.

Q. I am not asking you that. I say, you knew she was furnished with electric power on nights when your operators did not [1362—1274] work on the ship?

A. If they did not work, yes. I knew that she was furnished with power. I could not give you the exact dates right now offhand.

Q. She was furnished with power when no work was done on the ship by your operators?

A. Yes, sir.

Q. Will you turn, Mr. Curtis, to the time-sheet of August 30th? A. Yes, sir.

Q. I call your attention to the operator, whose number is 315, whose name is W. Thomas, machinist working with the air-tube, where the charge is 10 hours straight time and 9 hours overtime; is that a correct charge?

A. Yes, sir, we checked it up at that time.

Q. That would mean how many hours that that man would actually work out of the 24?

(Testimony of Richard W. Curtis.)

A. Well, he would work all day, and he would work that portion of the night.

Q. How many hours would he work continuously?

A. He would work 19 hours continuously.

Q. Now, I call your attention to the sheet of the next day.

A. (Intg.) Of course you have got to bear in mind that 10 hours is placed here for an 8½ hour day.

Q. I understand that. I call your attention to the sheet of the next day, which is August 31st, where the same operator, W. Thomas, No. 315, worked 10 hours straight time and 3 hours overtime. Is that a correct charge?

A. Yes, sir, that must have been a correct charge as we checked it up at the time and decided that it was right.

Q. That is, after working on the 30th for 19 hours, he works how many hours the next day?

A. 10 hours the next day. I have seen men work 48 hours.

Q. He worked more than 10 hours?

A. He worked into the next night. [1363—1275]

Q. Mr. Curtis, why on the time-sheets, do you allow the foreman one hour more than the man on the night-shift?

A. The foremen stay and check up with the day foreman and he must have been on an hour longer because we checked up with the timekeeper and it was decided that that was the right time.

Q. Checked up with what timekeeper? Mr. Putzar? A. The timekeeper aboard the ship.

(Testimony of Richard W. Curtis.)

Q. Mr. Putzar?

A. Mr. Putzar was the timekeeper; yes.

Q. Was Mr. Putzar on the ship at night?

A. I have seen Mr. Putzar around the ship at various times.

Q. Answer my question, please. Was Mr. Putzar on the ship at night?

A. I have seen Mr. Putzar on the ship at night.

Q. Were you on the ship at night.

A. I was over there one night when this man Knight was injured.

Q. On the ship, were you?

A. I was in the confines of the yard.

Q. But you were not on the ship?

A. No, sir, I was not on the ship.

Q. So that you did not see Mr. Putzar on the ship?

A. No, sir, but I saw Mr. Putzar in the yard.

Q. So you do not know whether Mr. Putzar was on the ship at night?

A. You see I was not there at night. I saw him at various times there.

Q. I call your attention to the sheet of September 12th, which was Sunday, where the following workmen are allowed double time of 48 hours on that day: Thomas Bayhen, whose job number is 539; W. Schmidt, whose job number is 318; J. Johnstad whose number is 519; J. Sullivan, No. 353; E. McCabe, No. 546 and C. Holten, No. 536, and ask you if that is a proper charge? [1364—1276]

A. Yes, sir, it is a proper charge. It was checked up at the time.

(Testimony of Richard W. Curtis.)

Q. Do you think those men worked that time?

A. This was on a Sunday.

Q. I am aware of that.

A. They got double time. They worked all day and all night.

Q. Did they not stop for meals at all?

A. The custom has been over there in a rush job to send the men out as the opportunity affords; that is, they run across the roadway and get a glass of beer and a sandwich and come back. It takes them probably 8 or 10 minutes. If we were to dock them for the full noon hour or dinner hour, they would say "We will sit down and take our hour then." It is a benefit to the ship to get the ship out on time.

Q. I call your attention to the credit given to H. Hodgkins, whose shop number is 503, on the same day. You will find that he is credited with 28 hours double time under job number 5325, and with 20 hours double time under job number 5295, on the same day. How many actual working hours would that be on that day?

A. Taking an interpretation of the sheet as it stands now, without knowing the exact conditions, I would say he worked all day and all night on Sunday.

Q. That is, he worked 24 hours continuously?

A. Yes, sir.

Q. Do you think that is possible? A. Yes, sir.

Q. There is a difference between an iron worker and a helper, is there not, Mr. Curtis?

A. There is a difference between an iron worker and a helper.

(Testimony of Richard W. Curtis.)

Q. And they are paid differently, are they?

A. They are paid differently; the rates vary you know on the ability of the man. [1365—1277]

Q. The iron worker is paid more than a helper, is he?

A. Iron workers are paid more than a helper.

Q. Now, will you turn to the sheet of September 17th. I refer you to the entry there of C. Schmidt, under shop number 355, where he has been shown to work as an iron worker for 8 hours.

A. What sheet is that?

Q. September 17th, No. 355. As an iron worker he is shown to work for 8 hours. Have you got that?

A. Yes, sir.

Q. That was on your sheet No. 72. Now, on your sheet No. 73, on the same day, I call your attention to the same man working as a rigger for 2 hours; can you explain that?

A. September 17th he worked as a rigger. On this September 17th, page 72, he worked cementing in the tanks.

Q. Is he not classified as an iron worker?

A. He is classified as an iron worker.

Q. Can you explain why he is classified as an iron worker and a rigger on the same day?

A. He worked 2 hours as a rigger, and when he worked as a cement worker he used hand tools and so forth in cementing, and there was an additional charge made for that; in other words, he is charged as an iron worker.

Q. You say he worked on cementing the tanks or

(Testimony of Richard W. Curtis.)

cleaning the tanks?

A. They were cementing at that time; both cleaning and cementing.

Q. Is not the record cleaning and not cementing?

A. That may be. It says "cleaning" there; it might have been cutting out cement.

Q. How did you charge the Matson Navigation Company?

A. We charged the Maston Navigation Company with Schmidt for 2 hours for a rigger and 7 hours as an iron worker. That is the custom. [1366—1278]

Mr. FRANK.—Q. 7 or 8? A. 8 hours rather.

Mr. McCLANAHAN.—Q. Will you please turn to the time-sheet of September 20th? I call your attention to the pipe-fitters shown on your sheet, No. 80, of that date, the numbers of the men being 403, 407, 401 and 408, and ask you what was the character of time worked by those men that you charged to the Matson Navigation Company, straight or overtime?

A. That is just carried out as a total. It is evidently overtime. I knew it was right at the time it was checked up. I cannot recall the exact time or the incident that those men worked, or under the conditions that they worked.

Q. The charges do not conform with the general method pursued in keeping time in the book?

A. Of course there are personalities about this thing in a little way, in a man keeping time, but that is the total time for that man.

Q. Did you call Mr. Putzar's attention to these

(Testimony of Richard W. Curtis.)

personalities? A. Mr. Putzar checked this sheet.

Q. He checked that sheet?

A. He knew that the total was right.

Q. He checked that sheet from the time-cards?

A. Yes, sir, and from his handbook.

Q. You keep referring to the handbook. I understand you never saw it but once, did you?

A. No, sir, but he spoke about it a great many times to me; that is, whenever I would meet him, if there was any controversy came up he would say "my handbook says so and so." That is the reason I refer to it.

Q. However, you did see the handbook once?

A. I did see the handbook.

Q. What did it look like?

A. I cannot recall the size of it, or the shape of it.

[1367—1279]

Q. That was on the inception of the work?

A. I saw it afterwards, too, when she was over here on this side.

Q. Then you saw it twice?

A. I saw it twice; yes, sir.

Q. Did you examine it when the ship was over here on this side?

A. I did not look into his handbook at all.

Q. You just saw it lying somewhere?

A. He told me it was the handbook that he kept the time in. As a timekeeper I do not interfere with another man's record.

Q. I call your attention to the sheet of September 12th, to the entry under 355, C. Schmidt, rigger.

(Testimony of Richard W. Curtis.)

How many hours did Schmidt work on that day?

A. Schmidt, I think, worked 34 hours, that is, with his overtime.

Q. That would be how many hours of actual work, 17? A. 17, yes. It would be 17.

Q. I call your attention to the entry on the sheet of September 13th, your number 55, to C. Schmidt, and ask you how many hours he worked that day.

A. C. Schmidt worked 10 hours straight time and 15 hours over.

Q. That would be a total of $23\frac{1}{4}$, would it not?

A. No, sir, 15 hours at night. He worked straight all night.

Q. And how many hours were allowed for him?

A. 15 hours; double time at night.

Q. How many for the day?

A. 10 hours for the day.

Q. He was allowed 15 hours for the night work doubled, was he? A. Yes, sir.

Q. 30 hours? A. Yes, sir, and 10 for the day.

Q. That would be 40 for that day?

A. That would be 40 for that day. [1368—1280]

Q. Now, will you turn to C. Schmidt, under September 14th, the next day. How many hours was he allowed that day?

A. He worked 10 hours in the day, and 15 hours at night. He was allowed for the total day and night 40 hours.

Q. Would it be possible, do you think, for that man to work three consecutive days that many hours?

A. Yes, sir, I have seen it done.

(Testimony of Richard W. Curtis.)

Q. How much, Mr. Curtis, would that allow off for meals, and sleep in three consecutive days?

A. I have seen men work three consecutive days without sleep.

Q. And without eating?

A. Well, just as I explained to you before, when there is a rush job over at the United Engineering Works they allow the men off as they can spare them; they go across the roadway and get their meals, whatever the meal might be—what I call a hand-out—a glass of beer and a sandwich—and they come back and immediately go to work. That helps the ship out. If we were to take the meal time out of that man he would say, “I will take my hour and will not work until my hour is up” and that would delay the ship.

Q. It is apparent to you, is it not, that this man C. Schmidt was a rigger and not an iron worker?

A. The man, C. Schmidt, is a rigger. We have men like C. Schmidt that also could be used as a cement worker. He is experienced in that line. When we work him as a cement worker there is an additional overcharge to the cost of that man as he uses hand tools. We contend that as that man performed the cementing work properly he was an iron worker. That is in the tanks.

Q. Mr. Curtis, for the time being I will leave the time-sheets alone. I understand that when work came in to the shop you [1369—1281] furnished the different foremen with a copy of it, having numbered it? A. Yes, sir.

(Testimony of Richard W. Curtis.)

Q. And kept a copy yourself in the office?

A. Yes, sir.

Q. Do you destroy the copy that you keep in the office? A. Yes, sir, we destroy all that.

Q. What for?

A. Well, it is of no use to us. The copy of the bill is our original form of entry.

Q. Do you destroy them at once after the work is finished?

A. Yes, sir. Just as soon as the consolidation is made, or the bill is gotten up and the heading made out, we destroy those things right away.

Q. Suppose the work is done under specifications, and under an agreed price. Do you destroy the specifications as soon as the work is done?

A. Yes, sir, we destroy these specifications.

Q. What for?

A. It is accumulated stuff that is of no interest to us.

Q. I ask you if you destroy it at once.

A. Yes, sir, as a general rule we do.

Q. Did you in this case destroy the original lists of work that came to the shop?

A. Well, I do not know what the original list of work is. At the present time the only list that I saw was the list that the engineer had.

Q. Where did he get it? A. I do not know.

Q. What engineer?

A. The engineer of the people that were having the work done on the "Hilonian."

Q. What engineer; what is his name?

(Testimony of Richard W. Curtis.)

A. Mr. Putzar had a list.

Q. Don't you know where he got it?

A. I don't know; no.

Q. You did not have a list like that?

A. I did not; no. [1370—1282]

Q. If such a list had been in the office of the United Engineering Works, you would have known of it?

A. Well, if such a list came in immediately for that work to be performed I, as a general rule, would know it.

Q. You would know about it? A. Yes, sir.

Q. What was the list that you did have that came into the office first to which you attached No. 5295?

A. The engineer had a list.

Q. Is that the list that you attached 5295 to?

A. Yes, sir.

Q. So, then, Putzar's list that you say he had was the same as the list which came into the office first, to which you put 5295?

A. I did not see any list that came into the office until I was across the Bay, and the engineer or representative of the Matson Navigation Company presented a list of the work that was to be performed on that vessel.

Q. Well, what list was it that you attached 5295 to? A. I made a copy of that list.

Q. You made a copy of that list? A. Yes, sir.

Q. Where. Over there? A. Yes, sir.

Q. Where is that list? A. That is destroyed.

Q. You destroyed it? A. Yes, sir.

Q. Did you not know when you destroyed it that

(Testimony of Richard W. Curtis.)

it was contract work?

A. I did not know anything about the conditions, whether a contract existed on that work. All I knew was it was a list of work, and they wanted to do that work on board of that vessel.

Mr. FRANK.—I object, Mr. McClanahan, to your assuming it was contract work. We deny that it was contract work, or that there was any contract for it at all.

Mr. McCLANAHAN.—Q. Did you know Mr. Curtis, that the [1371—1283] United Engineering Works figured on that list that Mr. Putzar had in his possession when the “Hilonian” first went over to your shop?

A. I do not know anything of the details of the figuring end of the business. I do not attend to that.

Q. That is something that you do not know about?

A. It is out of my department; yes.

Q. When a contract is entered into between your people and the ship owner, what is its course through the office?

A. The mail comes in in the morning. If it is sent by mail, or if it is sent in—I do not care whether brought in or sent in by mail—it is generally referred to me. That is after we have made a subcontract for so and so, and the letter is placed on file.

Q. So that the contracts that are entered into do come under your supervision?

A. They do as far as the handling of my department is concerned, what I wish to get out of them.

(Testimony of Richard W. Curtis.)

Q. When you get a contract you place a number on it, do you not? A. Yes, sir.

Q. It is one of those serial numbers?

A. Yes, sir.

Q. By serial number, you mean each job chronologically is given a number?

A. Yes, sir, as it happens to come in the shop we give it a number.

Q. For instance, if you have given 5295 to a piece of work and another piece of work comes in, it would be 5296?

A. If it happens to be so, if the job did come in after 5295, it would be 5296.

Q. And the next job would be 5297?

A. Yes, sir. It depends on conditions.

(An adjournment is here taken until to-morrow, Wednesday, October 25, 1911, at 9:30 A. M.)
[1372—1284]

Wednesday October 25th, 1911.

RICHARD W. CURTIS, cross-examination resumed:

Mr. McCLANAHAN.—Q. Mr. Curtis, you remember that in the course of this hearing on several occasions I sought from Mr. Frank the “Hilonian” job numbers, and he disclaimed any knowledge of what they were?

A. I remember your asking him several times for the job numbers. I don’t remember the details of the answers or the questions. I know you did ask for them.

Mr. FRANK.—Am I on trial?

(Testimony of Richard W. Curtis.)

Mr. McCLANAHAN.—No. That is entirely unnecessary, Mr. Frank. You will see the drift of my examination. When it becomes personal then it is time to talk.

Q. Mr. Curtis, when the job numbers were finally furnished, you were the one who furnished them to Mr. Frank, were you not?

A. I furnished them to Mr. Frank; yes.

Q. You knew of the Court's order, did you not, requiring the numbers to be furnished?

A. I knew from Mr. Frank. He asked me to furnish him the numbers in order that he might give them to you.

Q. Did you not know of the Court's order?

A. I did not go into the details of the Court's order.

Q. That is not my question. Did you not know that we had had a hearing before the Court, and the Court had required the libelant in this case to furnish the respondent with the job numbers?

A. I understood that you went out to court to go into the technical part of it. I did not understand that at all. I knew you had to go to court and had some kind of decision relating to it.

Q. You knew that the Court required you to furnish those numbers? [1373—1285]

A. Perhaps it did. I don't know the conclusion. I only know that Mr. Frank requested me to give the numbers after you had gone out of court and had returned.

(Testimony of Richard W. Curtis.)

Q. Why did you not give him all the "Hilonian" job numbers?

A. I gave Mr. Frank all the "Hilonian" job numbers.

Q. Did you give him No. 1818 or 5528, or 5401, or 5009?

Mr. FRANK.—I object to that upon the ground that those are contract numbers. They are not job numbers included in the Schedule No. 1 at all.

Mr. McCLANAHAN.—Q. Please answer the question.

Mr. FRANK.—They are numbers which were expressly stated to Mr. McClanahan in the course of his examination as being immaterial.

Mr. McCLANAHAN.—Q. Answer the question.

A. I gave Mr. Frank all the numbers.

Q. I have asked you if you gave him those particular numbers?

A. I know I gave him the entire list of numbers. I checked it back and gave him the entire list.

Q. Did you give him those numbers that I have called back?

A. Maybe I have. I do not recall it. I tell you I went through and gave him all the "Hilonian" numbers. I do not remember the numbers in line unless you produce something to identify it right now. I looked them up from the records I had and produced the numbers of the "Hilonian."

Q. I will have to ask you to tell me what the "Hilonian" numbers are then.

A. I gave them to Mr. Frank.

(Testimony of Richard W. Curtis.)

Mr. FRANK.—You have every “Hilonian” number, Mr. McClanahan. You have the “Hilonian” numbers that I have given you for Schedule No. 1, and you have every “Hilonian” number from this witness identified by the different schedules appended to [1374—1286] the libel. I do not understand what this is. Is it a pretense that you have not got the “Hilonian” numbers, because you have every one.

Mr. McCLANAHAN.—Q. Please answer the question.

A. I do not remember them from memory; no.

Q. Where did you make inquiry in order to tell Mr. Frank what they were?

A. From my original bills.

Q. From your original bills?

A. With the exception of the numbers on Schedule 1 which are on Mr. Putzar’s time-sheets.

Q. So that you examined Mr. Putzar’s time-sheets for the numbers covering Schedule 1?

A. Yes, sir, they were on Mr. Putzar’s time-sheets.

Q. Is that the only place where they are?

A. That is the only place, yes.

Q. In the records of the United Engineering Works that is the only place?

A. Yes, that is the only place at the present time; that is, you understand that I destroyed the lists after I made up the bill that contained the different numbers.

Q. Mr. Frank knew those numbers, didn’t he?

(Testimony of Richard W. Curtis.)

Mr. FRANK.—Knew of what numbers?

Mr. McCLANAHAN.—The numbers on Mr. Putzar's time-sheets.

Mr. FRANK.—How does the witness know what I knew of?

Mr. McCLANAHAN.—Q. Answer the question.

A. What do you mean by Mr. Frank knew the numbers? I don't understand your question.

Q. Mr. Frank had in his possession the time-sheets of Mr. Putzar, did he not, during this hearing?

A. We had all the evidence up here during this hearing.

Q. Answer the question specifically. He had these sheets in his possession, did he not? [1375—1287]

A. Yes, sir, all the records were here.

Q. And all the bills, did he not? A. Yes, sir.

Q. And all that you did in compliance with the Court's order, or in compliance with Mr. Frank's request, was to simply collect off the time-sheets the numbers appearing there, and give to Mr. Frank the additional numbers appearing on the other schedules of the libel; is that all?

A. Mr. Frank did not go into details as to the numbers prior to the time that you made a demand for them that I can remember. I checked them up when he told me to get those numbers out for you. I checked them up from these records that I have.

Q. That is all you did, is it not? A. Yes, sir.

Mr. FRANK.—I should like to know the mate-

(Testimony of Richard W. Curtis.)

riality of this. If there is any intimation that I had knowledge of these numbers and withheld them, I should like to know it now.

Mr. McCLANAHAN.—The facts are there. I do not care what you make of them.

Mr. FRANK.—Then I move that it be all stricken out as immaterial. You may draw what conclusion you may, but the facts are not there showing that I knew anything about the numbers. You are assuming that I knew all about the details and how to get these numbers because the witness did. If you are trying me on this case I should like to have a specification on which to answer your allegations.

Mr. McCLANAHAN.—Q. Mr. Curtis, No. 1818 appears on Schedule 3. Did you furnish that number to Mr. Frank?

A. I furnished that number to Mr. Frank.

Q. No. 5528 appears on Schedule 3. Did you furnish that number to Mr. Frank? A. I did, yes.

Q. No. 5401 is the number given to the brake-rig contract. [1376—1288] Did you furnish that number to Mr. Frank?

Mr. FRANK.—What do you call the brake-rig contract?

Mr. McCLANAHAN.—Q. Answer the question, please. Did you furnish that number to Mr. Frank?

A. Let me see it.

Q. There it is (handing paper to the witness).

Mr. FRANK.—Q. What is that?

A. That is making and installing one brake-rig.

Mr. McCLANAHAN.—Q. Did you furnish that to Mr. Frank?

(Testimony of Richard W. Curtis.)

A. I furnished all the numbers when they were requested at that time.

Q. Answer specifically? A. Yes, sir, I did.

Q. You furnished that? A. Yes, sir.

Q. Did you 5009, which is the number appearing on Schedule 8, Mr. Frank?

Mr. FRANK.—You know, Mr. McClanahan, that all those numbers are attached to the bills in the libel that you are reading off, that they were furnished to you and furnished by the libelant. I object to this until I know what the meaning of it is.

Mr. McCLANAHAN.—Q. Answer that question.

Mr. FRANK.—One moment. I am not going to sit here and have him go into matters of this sort with the attempt impliedly to cast aspersions on me, unless it has some materiality to the case. I instruct the witness not to answer any further on this line unless instructed to do so by the Court.

Mr. McCLANAHAN.—We claim that the numbers that were required to be furnished us by the order of the Court were all the “Hilonian” job numbers covered by this libel. We claim that you did not furnish all those numbers to us, and we have therefore [1377—1289] been handicapped in the trial of this case.

Mr. FRANK.—If that is what you are talking about I say that you know that that is not a true statement of the facts, for the reason that every “Hilonian” number was furnished you and was in the libel except those that referred to Schedule 3, and those were the ones that we furnished you at the time

(Testimony of Richard W. Curtis.)

in addition. And you know, further, that during the entire examination you objected to those other numbers as being immaterial.

Mr. McCLANAHAN.—Which were the numbers?

Mr. FRANK.—The numbers on the contracts. You had every one of them. You never were for one moment handicapped in the matter, the pretense to the contrary notwithstanding.

Mr. McCLANAHAN.—That will be our claim.

Mr. FRANK.—And you make many claims that have no foundation in fact.

Mr. McCLANAHAN.—That may be so or not.

Q. Answer the last question, Mr. Curtis.

Mr. FRANK.—I object to the question as immaterial, and instruct the witness not to answer unless he is ordered to do so by the Court.

Mr. McCLANAHAN.—Q. Mr. Curtis, do you decline to answer? A. I do.

Mr. FRANK.—I am tired of these false issues. I have stood them about as long as I think I am called on to do.

Mr. McCLANAHAN.—Q. Mr. Curtis, will you please look at Schedule 8? A. Yes, sir.

Q. Can you tell me, Mr. Curtis—

A. Wait a moment until I get the schedule.

Q. Can you tell me from an inspection of that schedule, bearing the number 5009, whether it was a prior or a subsequent piece [1378—1290] of work to that covered by the original list of work on the “Hilonian” which has been referred to in your evidence?

(Testimony of Richard W. Curtis.)

A. No, sir; I could not tell you now; I do not remember.

Q. Can't you tell from the number itself whether it was prior or subsequent?

A. No, sir, I could not.

Q. It bears a serial number, does it not?

A. Yes, sir, that is true.

Q. That is prior to the serial number which the original list of specifications bore?

A. That is true.

Mr. FRANK.—You may make whatever argument or deduction you see fit from that.

Mr. McCLANAHAN.—Q. Then does it not necessarily follow that this is a prior contract?

A. Yes, sir, by the serial number it does.

Q. Now, you have here before you Mr. Putzar's time-sheets as your Exhibit 3. You have before you the libel with its different schedules bearing job numbers. Will you please tell me if No. 5298 is a "Hilonian" job number?

A. (After examination.) I do not see 5298 on Mr. Putzar's sheets. I cannot recall now whether 5298 belongs to the "Hilonian" or not. As far as I can recollect at the present time I do not think it does.

Q. I should like to have you exhaust your research, so as to be able to answer that question clearly and fully. I understood that Mr. Putzar's time-sheets were your only source of information?

A. Yes, sir.

Q. That 5298 does not appear upon the schedules

(Testimony of Richard W. Curtis.)

attached to the libel, does it? .

Mr. FRANK.—They speak for themselves. You can see for yourself. [1379—1291]

A. (After examination.) No, sir. They are not on Schedule No. 1. There are no figures at all there, and on the rest of them 5298 is not there I don't think.

Q. And it does not appear on any of the sheets of Mr. Putzar? A. No, sir, not so far as I could see.

Q. Then 5298 is not a "Hilonian" job number, is it? A. No, sir, I don't think it is.

Q. Will you please tell me whether 5395 is a "Hilonian" job number?

A. 5395 is not on the schedule.

Q. And does not appear on any of the schedules attached to the libel? A. No, sir.

Q. Now, Mr. Curtis, if there have been introduced in evidence in this case time-cards or stock cards bearing those numbers charging the work or labor to the Matson Navigation Company they were improperly introduced, were they not?

Mr. FRANK.—Let me see the cards.

A. Well, I could not say that offhand. There are a great many numbers on all of those cards that do not pertain to that work.

Mr. McCLANAHAN.—Q. Should those two numbers, or either of them, or work performed under those two numbers, or material furnished, be charged the Matson Navigation Company?

Mr. FRANK.—If you have got any such numbers let us see them. Show them to us, and we will ex-

(Testimony of Richard W. Curtis.)

plain the cards. We are entitled to an opportunity to explain them if there are any cards bearing those numbers.

Mr. McCLANAHAN.—Q. Answer the question.

A. The only thing I can say about that is, I would have to see your cards that contain these numbers. I could not say off-hand what it is. There might be something about the cards [1380—1292] that might be an error in the number. So far as the work is concerned that might belong or pertain to that job. I could not tell you right offhand unless I saw the cards or the stock cards.

Q. You think that there might be stock cards that properly would be chargeable to the “Hilonian,” bearing those numbers?

A. I would not say that; no. The only stock cards and time-cards that we intended to charge to the “Hilonian” were those that bore the numbers of the “Hilonian.”

Q. So that if you have introduced other cards bearing other numbers, it was done inadvertently; in other words, you do not intend to charge the “Hilonian” with material furnished, or time furnished under those two numbers?

A. No, sir, not under other numbers outside of the schedule numbers.

Q. Now, Mr. Curtis, you have said that the labor and material found on Schedule 1 was furnished under certain numbers that you gave?

A. Yes, sir.

Q. That is correct, is it? A. Yes, sir.

(Testimony of Richard W. Curtis.)

Q. And that in making out Schedule 1 you discarded these numbers and consolidated all the work and material under that schedule, without giving it a number?

A. I did not discard the numbers. I used those numbers collectively. I used that as a serial number for that, and consolidated all the work done under these numbers in Schedule 1.

Q. You used what is a serial number?

A. These numbers that I gave were on Schedule 1 collectively.

Q. You discarded all those numbers in framing your bill. You did not put any of them on your bill? [1381—1293]

A. No, sir, because they were on Mr. Putzar's sheets.

Q. What was your reason for doing that?

A. My reason for doing that was that there were so many changes and interchanges that conflicted one with the other with pieces that were changed and rechanged, machined and remachined to suit different conditions that arose that it was impossible to segregate and keep a segregation in work under a number, for the reason there were so many changes occurring. It would take a great number of numbers to keep track of it.

Q. These several numbers which were consolidated in Schedule 1 were placed on the lists of work to be performed by you, were they? A. They were; yes.

Q. And during the progress of the work the workmen placed those respective numbers on their time-

(Testimony of Richard W. Curtis.)

cards, did they not? A. They did.

Q. As they did work under that particular list, did they not? A. Yes, sir.

Q. What was the difficulty, then, that you found in taking Mr. Putzar's time-sheets with these several numbers attached to the work? What was your difficulty in still maintaining those numbers separate and distinct?

A. The numbers were used collectively on the job; that is, the man who had that department number used that department number—

Q. Excuse me. What department number do you refer to?

Mr. FRANK.—Let him finish his answer.

A. I mean the number that was given to the man by the foreman. He uses that number regardless of what change was made on the order that was issued for that number. That is, he keeps track of those changes under that order, and kept his time [1382—1294] under that number.

Q. You were familiar, were you, with the changes?

A. Well, in a general way, yes. In a general way at that time.

Q. I hand you a paper entitled "Specifications for repair to S. S. 'Hilonian,' " marked "Siversen Exhibit." What was the number that you gave for those specifications?

A. I have never seen the specifications before. I could not distinguish the specifications now from what was brought over there by the engineer or the representative of the ship. He brought a list of

(Testimony of Richard W. Curtis.)

work. I do not remember the details of that at the present time.

Q. When you say "I have never seen the specifications before," you refer to that particular paper?

A. That is what I mean. I cannot identify the form of it. That is what I mean. I know that he had a list, but to say that was the same form as this I could not do it. I do not remember it.

Q. Cannot you read that over and identify it as the original list of work that was to be done on the "Hilonian"?

A. No, sir, I could not do it at the present time because I will tell you, I do not pay such particular attention to a list of work as to memorize it and remember it this length of time, for the simple reason that I have so many, and have gone over so many bills up to the present time that I could not specialize that this was the list of repairs at the time that the work was done.

Q. Now, look at the first item of that specification. Don't you remember that that work was done on the "Hilonian"?

A. No, sir. I cannot remember what work was done on the [1383—1295] "Hilonian," or what work was not done on the "Hilonian" at the present time. The only thing I have got to go by is my heading on my bills that I knew I made up from the reports of the different foremen in the yard, and knew that work was done.

Q. Suppose you take that bill and see if you can-

(Testimony of Richard W. Curtis.)

not identify that first specification as work that was done.

A. I will tell you, I could not go through this list on this bill, on this list you have given me here and pick out what was done and what was not done in detail. I tell you I did not go into the manner or method that these things were done when the job was finished, and during the progress of the job. I knew certain changes were being made by consulting the foremen of the different departments, at the time it was fresh in my mind. I reread both the copy of the original list of work and the other details of work that had accumulated during the progress of the work and checked it over with the foreman. That is the extent that I went to.

Q. Has this matter lain dormant in your mind since 1909?

A. It has to the extent that I have never given it a single thought as to the details of the work, or the amount of the work of any specific part of the work. All I have paid attention to is the time at the time I made up the bill, and as to the headings from the different foremen's reports. As to the settlement of the different parts of the work or how it was done I have had nothing to do with that.

Q. You have had the entire charge and conduct of this case, have you not, for the United Engineering Works? A. I have in a general way, yes.

Q. And have been present at all the hearings?

A. Yes, sir. [1384—1296]

Q. Please look at the second item of specification,

(Testimony of Richard W. Curtis.)

on Siversen Exhibit "A" and tell me if you do not remember that that item was supplemented by the installation of a small balance cylinder instead of the work called for by item 2.

A. All I know about it is we made a balance cylinder and installed it on the "Hilonian." At the present time that is fresh in my mind, but what it took the place of or what was done I do not remember at this time—

Q. Don't you know—

Mr. FRANK.—Let him finish his answer.

A. Or what was done at this time to install that, I could not tell you.

Mr. McCLANAHAN.—Q. Don't you know that that balance cylinder job was never given a separate number?

A. I cannot recall that at the present time, just as I told you, for the simple reason we could not make those segregations. I took the whole thing collectively and made a bill out of it collectively.

Q. Where did you get a list to which you attached job number 5297, which is one of these consolidated job numbers embodied in Schedule 1?

A. I could not tell you that now. I do not remember. The only thing I do remember is, these numbers pertaining to the "Hilonian" job. To tell you definitely what started on each number outside 5295 I cannot tell you at present.

Q. Tell me what started definitely under 5295.

A. I could not tell you. I can only tell you 5295 started with the original list of work that the repre-

(Testimony of Richard W. Curtis.)

sentatives of the "Hilonian" presented at the yard.

Q. You then cannot tell me where you got the list of work to [1385—1297] which you attached either 5297, 5296, 5318, 5346, 5360, 5325, 5394, or 5398?

A. No, sir. I could not go into it in detail and tell you because I do not remember.

Q. Can you tell me what work generally was covered by 5360?

A. No, sir, I could not at the present time.

Q. Let me ask you to examine Putzar's time-sheets for 5360, and tell me what work was covered generally by that number.

A. (After examination.) On 5360 the sheets state that the men were working on the smokestack.

Q. On the smokestack?

A. Yes, sir, and placing letters on the smokestack.

Q. You refer to your sheet 42, do you not?

A. Yes, sir, smokestack.

Q. And to your sheet 48 "Letters on stack"?

A. Yes, sir.

Q. Those are the two sheets you refer to?

A. There is another sheet further on.

Q. There is? A. Yes, sir.

Q. Do you mean earlier or later? A. Later.

Q. And your sheet No. 72?

A. Yes, sir, that is right.

Q. So that No. 5360 was the smokestack job number, was it?

Mr. FRANK.—He did not say that.

A. No. 5360 shows that there was work done on

(Testimony of Richard W. Curtis.)

the smokestack.

Mr. McCLANAHAN.—Q. That must have been the smokestack's job number.

A. It was a smokestack job number. It was for other work on the smokestack. It covered a great deal of work that I can remember.

Q. Was there any work done on the smokestack except the work covered by Schedule 9 of the libel?

A. Let me see Schedule 9. (After examination.) In answer to that I will say this: that there was an agreed price for [1386—1298] certain work on the smokestack and there was also other work done on the smokestack. You can see that by the time-sheets. The extent of that work I do not remember at the present time, but I know the timekeeper in charge of the work knew what was being done on the smokestack, and he checked the time at that time.

Q. What was the other work done on the smokestack outside of the contract which is shown by Schedule 9?

A. That I cannot remember. I do not remember.

Q. Was it not placing letters on the smokestack?

A. If it states so on the time-sheets. It was also placing letters on the smokestack.

Q. Does that refresh your memory at all?

A. It refreshes my memory to the extent that I knew that she did not have letters on when she went over there. When she left the yard I knew she had letters, and I knew that they placed the letters on the smokestack.

Q. Also you knew that the letters were not put on

(Testimony of Richard W. Curtis.)

there under any contract? A. Evidently not.

Q. Do you know of any other work besides the letters not covered by Schedule 9, that was done on the smokestack?

A. I could not specify or generalize just what was done on that smokestack, outside of what was on the time-sheets. It shows work on the time-sheets. That was checked up at the time but I don't remember exactly what was done.

Q. Are you willing to testify, to your knowledge, that there was work done on the smokestack other than covered by Schedule 9 of the libel, and other than the letters which were placed there?

A. I am willing to say this: that there [1387—1299] was work performed on that smokestack other than the contract, for if there was not the time-keeper would not have allowed the time, and we would not have charged the time. The timekeeper knew what was being done under all numbers on the "Hilonian."

Q. That time No. 5360, appearing in Putzar's time-sheets, was charged against the respondent in this case, and embodied in Schedule 1, was it not?

A. Yes, sir.

Q. And you are also suing in this case for Schedule 9 of the libel, are you not? A. Yes, sir.

Q. Why was the smokestack work done on the "Hilonian" as shown by Putzar's time-sheets given job number 5360, and Schedule 9 of the libel, the contract for the stack work, given 5389?

A. The contract for the stack work was given 5389

(Testimony of Richard W. Curtis.)

because we did not want to charge you people with work you contracted for in your time and material work. It was given a separate number for that purpose.

Q. All of the smokestack work that was done on the ship, as shown by Putzar's time-sheets, bear the number 5360 and not 5389?

A. No, sir, because it was time and material work.

Q. What was time and material work?

A. 5360.

Q. Work on the smokestack?

A. Work on the smokestack, if it states "smoke-stack." On the sheets it was time and material, work performed on the smokestack.

Q. And you charged that to the Matson Navigation Company?

A. After being duly checked by the representative of the ship, and found to be right, I charged it to the Matson Navigation Company.

Q. Putzar's time-sheets would show all the work done on the [1388—1300] smokestack, would they not?

A. Not all the work done on the smokestack. As I stated before, the work that was agreed, and the agreed price given was put under 5389, and is not on Putzar's sheets.

Q. Then Mr. Putzar did not keep time on the "Hilsonian" of the work performed under Schedule 9 of the libel?

A. Mr. Putzar did not keep the time. Mr. Putzar knew the men that were working on the job. He got

(Testimony of Richard W. Curtis.)

the numbers for that work; he knew the extent of the work as any timekeeper would; he checked the men on the work, what the company agreed to do for an agreed price from which is extra, or any alterations.

Q. Then Mr. Putzar's time-book does not contain any labor performed on the "Hilonian" under Schedule 9? A. No, sir.

Q. You are sure of that?

A. Yes, sir, I am sure of that, because we checked it up at the time.

Q. And yet you do not know what labor was performed on the smokestack other than Schedule 9 and the letters? A. I do not know what labor?

Q. Yes.

A. The labor is stated on the sheets, but I do not know what the work was in detail. I do not remember at the present time.

Q. It would have been an easy matter, would it not, Mr. Curtis, to have given the work done in making the letters that went on the smokestack a separate number?

A. No, sir. As I told you before, the changes were becoming so great and extensive and so many of them, and some of them large and some of them small, that in order to simplify matters we did not put in any more numbers.

Q. That does not answer my question, Mr. Curtis. I want to know if it would not have been an easy matter to have given [1389—1301] the work of

(Testimony of Richard W. Curtis.)

making those letters that went on the stack a separate job number.

A. It would only make it more intricate to carry out in this way. You would have put every little change you would put in in a number and you would have more numbers than changes.

Q. I am not speaking of any change. I am speaking of putting on a job number for the letters on the smokestack. That would have been easy.

A. Yes, sir. But as I told you before, we did not want a whole lot of numbers. It leads to confusion.

Q. That could have been done, could it not?

A. It could have been done but it would lead to confusion.

Q. Could not the labor that was necessitated by making those letters and installing them on the smokestack been kept separate under a separate job number?

A. It could have been, but they are stated on the sheets.

Q. In fact, they were kept separate, were they not, the hours of labor performed on the letters for the smokestack?

A. That was a matter of segregation right at that time. I could not tell you now.

Q. Does not Mr. Putzar's time-sheets show that the labor was kept separate that was performed on the letters?

Mr. FRANK.—Mr. Putzar's time-sheets is not all the labor.

Mr. McCLANAHAN.—Q. With that qualification

(Testimony of Richard W. Curtis.)

will you answer the question?

A. It might be and it might not.

Q. Is it not a fact that Mr. Putzar's time-sheets also show that the boiler work performed on the ship was all done under one separate number, No. 5296?

A. No, sir, because just as I tell you, when we came to check up we found that certain details had been rearranged and rechanged, and we consolidated [1390—1302] the entire numbers collectively for that bill.

Q. So you deny that Mr. Putzar kept track of the boiler work on the ship under 5296?

A. I do not deny that Mr. Putzar kept track of the boiler work under 5296.

Q. Do you admit it?

A. I admit 5296 is on the steamer, but to go into details now and tell you exactly what was done in each particular, I cannot do it.

Q. Don't you know that Mr. Putzar kept track of the work performed on the tank and bulkhead under 5297?

A. I could not tell you that at the present time. I know he kept track of that work.

Q. Don't you know that Mr. Putzar kept track of the work performed on the gear-casings, stanchions and railings under 5318?

A. Mr. Putzar kept track of the time on the gear-casings, stanchions and railings.

Q. Under 5318?

A. Possibly under 5318. If it is on the sheet he did.

(Testimony of Richard W. Curtis.)

Q. Do you know if he found any difficulty in doing so?

A. I did not consult with him in regard to that.

Q. Mr. Curtis, when were these ship time-cards destroyed?

A. I do not remember that. I cannot recall that.

Q. How long do you keep the cards ordinarily?

A. We keep the cards 60 or 90 days.

Q. Do you keep them until you find out whether there is going to be a complaint or misunderstanding about the bill? A. Yes, sir, as a general rule.

Q. As soon as you presented this bill to the Matson Navigation Company, you knew that there was going to be a dispute over it, did you not?

A. No, sir, not for some time after.

Q. How long after?

A. I cannot recall that. [1391—1303]

Q. It was not paid at once and it has not been paid yet? A. No, sir.

Q. Did you destroy these cards yourself?

A. I ordered them destroyed; that is all. It is a standing order.

Q. Answer the question. Did you destroy them yourself? A. Destroy them myself?

Q. Yes.

A. I saw them destroyed when I went through the place, and they accumulated there. I ordered them destroyed.

Q. Did you destroy them yourself? A. No, sir.

Q. Who did?

A. We have various people cleaning out the place,

(Testimony of Richard W. Curtis.)

whoever it might be.

Q. Who destroyed the "Hilonian" cards?

A. I could not say at the present time.

Q. Who generally does that work?

A. We have handymen that clean out these cards, that clean out whatever we want cleaned out of the office. There is no specific man that that duty is imposed on.

Q. Who was the handyman at the time these cards were destroyed? A. That I do not remember.

Q. What do you mean by "handyman"?

A. I mean by handyman, a helper out in the yard that might not be doing anything, and he is told to come in the office and do so and so, or do whatever is required.

Q. I believe you said you saw these cards destroyed?

A. I did not say I saw the cards destroyed. I ordered all the cards at that time destroyed.

Q. How do you know that they were destroyed?

A. They generally burn them up in the boiler. As a general rule—I am not stating any specific cards—I know that [1392—1304] is the practice. We burn them up in the boiler, as a general rule.

Q. Have you any explanation to make that will account for the fact that the entries in Mr. Putzar's time-sheets covering September 11th are made after the entries covering September 14th?

A. No, sir, I could not tell you that at the present time.

(Testimony of Richard W. Curtis.)

Q. You recognize that is a fact, though, do you not?

A. I think it was that way. I do not remember.

Q. Have you any explanation to make of why the entries in Putzar's time-sheet covering the night of September 15th were made and entered after the night of September 16th?

A. I could not tell you. I do not remember. I do not know any of those details.

Q. You recognize that that is a fact, do you?

A. I only have the loose sheet.

Q. You recognize that the entry of September 15th was made after the night of September 16th?

A. I do not know.

Mr. FRANK.—What evidence have you of that? I should like to see the sheet myself.

Mr. McCLANAHAN.—Q. Look at the sheets. Let us take up the first one now that there is a controversy over the matter. Turn to September 11th. Now, with reference to September 11th, your sheet 63, you recognize that that sheet was made and entered by Mr. Putzar after sheet 62, which was the night of September 14th, do you not?

A. I do not remember that at all. Just as I say, I only got the loose sheets. I have been over these and checked them and re-sorted them.

Q. You kept them in the order in which they were given to you?

A. No, sir, I would not say that. [1393—1305]

Q. Why did you number, then, this sheet of September 11th, 63, after you had numbered the sheet

(Testimony of Richard W. Curtis.)

of September 14th, 62?

A. I have been through these sheets twice and each time I have numbered them in a different way. I started from the bottom up. If you will turn on the other side you will notice my numbers here, No. 82 and No. 19.

Q. Do you want to say now that your numbering there in the circles is incorrect?

A. I will not say that. It is just the numbering, as far as the numbering is concerned. I do not say that I picked them out and put them in a specific order but I have been through them and checked them and rechecked them.

Mr. FRANK.—Q. When did you put those numbers in the circles?

A. I put those numbers in the circles a couple of days ago when I was making a rechecking. I was at that time rechecking from their time-book making a comparison.

Mr. McCLANAHAN.—Q. Now, Mr. Curtis, you do not now remember anything about Mr. Putzar's turning in a sheet of September 11th after he had turned in the sheet of September 14th?

A. No, sir, I do not remember that detail.

Q. You do not remember now Mr. Putzar turning in the sheet of the night of September 15th after he had turned in the sheet of September 16th?

A. No, sir.

Q. You do not? A. No, sir.

Mr. McCLANAHAN.—Well, for the purpose of making perfectly clear this situation that the sheet

(Testimony of Richard W. Curtis.)

of September 11th, marked "Curtis Exhibit No. 3," sheet 63, follows the sheets of Mr. Putzar of September 14th, and for the purpose of making clear that Mr. Putzar's sheet of the night of September 15th follows the sheet of the night of September 16th, we offer in evidence the original [1394—1306] time-book kept by Mr. Putzar and by Mr. Curtis.

Mr. FRANK.—I object to that means of identification. What you are offering in evidence is the time-book passed in by Mr. Putzar to you, from which the sheets passed in to Mr. Curtis or the United Engineering Works were taken out.

Mr. McCLANAHAN.—We will not split hairs over that.

Mr. FRANK.—Let me see. Let me look at them. I do not see that it is material or makes any difference. At the same time I want to know what there is in this.

Mr. McCLANAHAN.—I ask that it be marked Respondent Curtis Exhibit No. 4.

(The time-sheet book is marked "Respondent Curtis Exhibit No. 4.")

Q. I understand, Mr. Curtis, that Mr. Putzar in your presence placed his signature on the sheets composing your exhibit No. 3, at the time you handed them over to him. Is that correct?

Mr. FRANK.—He did not say that.

A. I did not say that.

Mr. McCLANAHAN.—Mr. Frank, let the witness say he did not say it. The evidence clearly shows he did say it.

(Testimony of Richard W. Curtis.)

Mr. FRANK.—He did not, and I have a right to object to an assumption contained in the evidence, which is contrary to the evidence.

A. What I did say was that Mr. Putzar affixed his signature to the sheets I wrote out in my handwriting acting as his clerk in my presence.

Q. That is what I meant.

A. But they are not all in my handwriting.

Q. I stand corrected. I meant the sheets dated from September 17th to September 24th inclusive.

A. Yes, sir, that is right. [1395—1307]

Q. Now, in your direct examination you made the statement that the time-cards were duly checked up by the foreman of the different departments. Do you remember that statement?

A. Yes, sir, that is right.

Q. What did you mean by the foreman checking up the time-cards?

A. The foreman checked up the time-cards with their lists of work.

Q. How do you know that?

A. Well, it is their duty to do so, and I know at times that when I dropped into the office in the morning that some of them were checking the time-cards.

Q. And you assumed that that duty was performed?

A. Well, that is an imperative rule over there, to do that.

Q. Is it not also a rule that they should sign the time-cards as correct when they have checked them up?

A. No, sir.

(Testimony of Richard W. Curtis.)

Q. Why have you got printed on there a place for the foremen's signature?

A. That is an old form. We have never changed that form.

Q. Was it ever the rule and duty?

A. Very few foremen have ever signed the cards after they checked them up. Some of them do and some of them do not. We do not insist on it.

Q. The cards were printed for that purpose?

A. The cards are of the same form since 1898 or 1899, as I can remember.

Q. And were printed for the purpose of having the foremen sign their name to them?

A. It is a copy taken from the Standard time-cards.

Q. You do not know if they were printed for the purpose of [1396—1308] having the foreman sign them?

A. We never went out and insisted that the foremen should sign each time-card.

Q. After the foremen had checked up the cards I understand that you went out and checked them up?

A. They were turned into the office and I went through them.

Q. And you checked them up? A. Yes, sir.

Q. And you have already explained what you meant by checking them up?

A. I went through them and checked them up.

Q. You have already explained what you meant by checking them up?

A. I checked them up with the sheets.

(Testimony of Richard W. Curtis.)

Q. In making out Schedule 1, did you have any guide in your commencement of the enumeration of the work performed as shown on page 1 of the schedule? A. Yes, sir, I did have a guide.

Q. What was it?

A. The different lists of work from the different foremen of the different departments in the yard.

Q. And you used that guide in making out the schedule?

A. After being checked up with the foremen reading it through and rereading it, that was consolidated into this bill.

Q. So that the list of work forms your guide in making the enumeration which commences with page 1 of Schedule 1? A. Page what?

Q. Page 1 of Schedule 1.

A. Yes, sir, the list of work.

Q. And nothing else?

A. These lists and nothing else. [1397—1309]

Q. Mr. Curtis, the stock cards that have been introduced in evidence in this case were introduced for the purpose of showing the material furnished to the "Hilonian," were they not? A. Yes.

Mr. FRANK.—I guess I am the judge of what they were introduced for. The record shows what they were introduced for.

Mr. McCLANAHAN.—It seems the witness also knows, Mr. Frank.

Mr. FRANK.—That may be his idea.

Mr. McCLANAHAN.—Q. Did you ever give the same work two numbers?

(Testimony of Richard W. Curtis.)

A. What do you mean by the same work?

Q. Don't you know what I mean?

A. I do not; no.

Q. Well, *suppose were* making a list for the smokestack, would you give that particular job two numbers?

A. No, not as a general rule, no; but it might have been in some cases where we started out to make repairs, and then we started to use all the job numbers collectively, one part pertaining to one part might be charged under one number and one another, but the serial numbers were known to belong to that ship.

Q. On the same day did you ever give two numbers to the same piece of work?

A. The personal equations of the workmen; when they are checked up, though, it is known that the numbers belong to that ship, and if the numbers are used collectively, why it is charged to that ship—investigated at that time.

Q. You remember Mr. Chandler testified here recently when he was recalled?

A. Mr. Chandler, yes.

Q. Can you explain why his numbers are different on his time-cards for crank-pin brasses?

A. I cannot at present, no; I can't recall.

Q. Do you remember his testifying as to the number of pounds of [1398—1310] challenge metal that went into the "Hilonian" job? A. Yes.

Q. He said over a ton and a quarter, didn't he?

A. Yes.

Q. Why did you only bill 608 pounds?

(Testimony of Richard W. Curtis.)

A. Certain changes were made in that time, and certain work had been started on 5395, and then an agreement had been entered into as to a price for that work, and that metal and material and time was withdrawn at the time the work was progressing, after it became known that there was a figure agreed for that work; and whatever material was used in the work that was agreed upon was cut out; whether Mr. Chandler used it or anybody else used it, it was withdrawn.

Q. That is, there was a figure agreed upon for the challenge metal to be used on job 5295?

A. On part of it.

Q. And you were enabled to deduct from the total amount of challenge metal used on the whole job the amount of challenge metal for which there was no agreement?

A. Yes, because we did it at the time it was being done, the work was being done and the pieces were in the shop.

Q. And that extra challenge metal was 608 pounds?

A. That was charged to the "Hilonian."

Q. And the balance of the challenge metal came under an agreement? A. An agreement, yes.

Q. That called for no charge?

A. That called for what?

Q. For no charge, no specific charge?

A. Called for agreed prices for that part or piece.

Q. What was the agreement calling for an agreed price on the remaining portion of the challenge metal?

(Testimony of Richard W. Curtis.)

A. I don't remember that in detail, now, but you have charges there for different babbitting work, machine work on different pieces.

Q. Please examine the libel and see if you can tell me where the [1399—1311] balance of that one and a quarter tons of challenge metal is to be found in any contract. A. Schedule No. 4.

Q. Schedule No. 4. Any other schedule?

A. No; that is all.

Q. So that you think that the balance of the metal to make up the ton and a quarter over the 608 pounds charged extra was used in Schedule No. 4 under special contract? A. No.

Q. It was used in part? A. In part, yes.

Q. And where was the balance used?

A. Well, for four main bearing-boxes, I believe there was different remetalling on different parts of the ship; I can't recall the incident now or the particular part or piece.

Q. And where were they charged? Where was the metal charged for the four main bearing-boxes?

A. I can't recall now.

Q. You have your bill there; please look at your bill and tell me where that is charged. Please bear in mind, Mr. Curtiss, that I am speaking now of the surplus remaining of the ton and a quarter after you have deducted the 608 pounds and the amount of challenge metal necessary to do the work covered by Schedule 4.

A. Well, I can't recall that at the present time because I don't know definitely, only that on Sched-

(Testimony of Richard W. Curtis.)

ule No. 8 5009 there are four bearing-boxes, and possibly they were babbitted, I don't know; I don't remember.

Q. If they were, would Schedule 8 and Schedule 4 make up the balance of the ton and a quarter?

A. I would not say as to the ton and a quarter. I know there was babbitt used on the schedules; I won't say as to the ton and a quarter.

Q. Was there any babbitt—

A. I don't place that estimate of a ton and a quarter.

Q. Was there any babbitt used except on Schedule 4 and Schedule 8 and 608 pounds? [1400—1312]

A. I would not say about that, I don't remember. I have not got it placed distinctly in my mind.

Q. You have not charged for it, have you?

A. No. I have only charged you for 608 pounds, as you have on the bill.

Q. Mr. Curtis, the "Hilonian" was painted when she was over there, was she not? A. Yes.

Q. Why didn't you charge for painting?

A. There is a charge for painting.

Q. Where is that?

A. Schedule 1; cleaning and painting 2 coats, \$240.

Q. You are referring now to the last page of Schedule 1, are you not? A. Yes.

Q. Do you know that that only covers the labor on the painting?

A. That is all it covers, the labor.

Q. Why was not the paint charged?

A. The paint was bought direct; we do not supply paint.

(Testimony of Richard W. Curtis.)

Q. Buy direct of whom?

A. By the owners of the vessel, presumably the paint came to the yard. I suppose that the owners of the vessel bought the paint; we do not sell paint; we keep paint in stock in small quantities, but we do not handle it.

Q. So if a man wanted his vessel painted you couldn't do it and furnish the paint?

A. We would go to the parties who own the paint and arrange with them as to what paint he would use and we would supply that paint; we have nothing to do with furnishing that paint or the make of the paint.

Q. Will you please answer—if I want my ship painted you could not supply the paint?

A. I could supply the paint from the storeroom; each paint shop has a storeroom.

Q. So that it is a matter of agreement, is it not, whether you [1401—1313] supply paint or whether the owners of the ship supply the paint.

A. We do not supply paint. We make it a rule not to supply paint, that is, we supply, in a word—if you want to limit the word “supply” inasmuch as we have the paint on hand—that is, we don't charge for the paint; we don't handle the supplying or the cost price or anything of that paint, that is, being reimbursed for the paint itself.

Q. Do you mean to say that you never paint ships, supplying the paint yourself?

A. We have not for some time.

Q. Since when?

(Testimony of Richard W. Curtis.)

A. Oh, I can't give you a definite set time, but I do not think we have for the last four years.

Mr. FRANK.—What is the materiality of this? Are you trying to kill time or are you trying to make a record? You are not charged for any paint. What is the difference, then, with what we do with other people; what complaint have you got when you have not been charged for paint in this case?

Mr. McCLANAHAN.—Q. Without answering counsel so that the witness may have the benefit of the answer, I show counsel a certain paper.

Mr. FRANK.—Well, how does that make it material? You are not charged for the paint, are you?

Mr. McCLANAHAN.— I do not care to have any discussion.

Mr. FRANK.—I object to it.

Mr. McCLANAHAN.—Put in your objection.

Mr. FRANK.—I note my objection and insist upon it, and I insist that this record be not filled up with immaterial matter. There is a certain paper shown me, let the record show, that is Respondent Siver-
sen's Exhibit "A," subdivision 15. There is no materiality to it, and in order to put an end to this kind of [1402—1314] difficulty and taking time and piling up the record, I instruct the witness not to answer unless the Court orders that he shall answer.

Mr. McCLANAHAN.—What is the question, Mr. Reporter?

(The last question repeated by the Reporter.)

Q. Mr. Curtis, isn't it a matter, always a matter of contract and agreement between the parties as

(Testimony of Richard W. Curtis.)

to whether the owner of the ship furnished the paint or you furnish the paint?

A. When we have been giving a figure on painting a vessel it has always been understood that we were only to supply the labor; we have never furnished the paint.

Q. So that it is a matter of contract and agreement between the parties.

Mr. FRANK.—Now, if you are going much further with this, I will have to insist upon my objection. If there is any way you can explain to me how that thing can be material, even if you whisper it in my ear, so that the witness cannot hear.

Mr. McCLANAHAN.—Q. Answer the question, Mr. Curtis.

(The last question repeated by the Reporter.)

A. I do not make the contracts. I don't know. I only know that I have never charged the paint to any vessel for a number of years.

Q. You are quite sure of that, are you?

A. I am—to the best of my knowledge, I am.

Q. Yet you keep paint in your shop, do you not?

A. Just as a matter of accommodation, that is all.

Q. You did keep it there at the time the "Hilonian" was being repaired?

A. Yes, we kept paint there.

Q. It is perfectly clear, is it not, Mr. Curtis, that the labor and material furnished to the "Hilonian" under Schedule No. 1 or embodied in that schedule was at the time of its being furnished [1403—1315]

(Testimony of Richard W. Curtis.)

coupled with the job numbers which you say you have consolidated?

A. Yes; the job numbers were given to the ship at the time.

Q. When did you last see Mr. Putzar?

A. I have not seen Mr. Putzar for some time. I can't recall the exact time I saw Mr. Putzar.

Q. When did you last communicate with him?

A. I don't know as I ever communicated with him.

Q. What is that?

A. I don't know as I ever communicated with him. I don't remember.

Q. When did the United Engineering Works last communicate with him?

A. Well, I could not tell you; that is not in my line at all. I don't know.

Q. You know he has been communicated with, don't you? A. I don't know.

Q. Do you know where he is?

A. No, I do not personally.

Q. Personally you do not?

A. No, I do not, personally.

Q. Have you heard where he is?

A. No, I have not heard where he is.

Q. You have not seen him in a year?

A. Well, I would not say that; I possibly have seen him, you know.

Q. Haven't you talked to him within the last few weeks? A. No, I have not.

Q. What is that?

A. I don't remember of talking to him within the

(Testimony of Richard W. Curtis.)

last few weeks, no.

Q. Have you seen him within the last few weeks?

A. Well, I did not pay any particular attention; I might have seen him on the street, if he is in town—a marine engineer around the waterfront, probably I did pass him. I did not pay any particular attention to him; not interested in the man so far personally.

Q. Wasn't he offered employment by the United Engineering Works [1404—1316] after this "Hilonian" job?

A. I don't know anything about that; that is not in my line at all.

Mr. FRANK.—Call Mr. Eva and ask him.

Mr. McCLANAHAN.—I would rather call Mr. Gray.

Mr. FRANK.—You know where Mr. Putzar is; what is the use of your talking like that?

Mr. McCLANAHAN.—Perhaps you do.

Mr. FRANK.—Yes, I think I do.

Mr. McCLANAHAN.—Perhaps you talked with him.

Mr. FRANK.—Whether I did or did not, it is immaterial.

Mr. McCLANAHAN.—If you have, you have me at a disadvantage. I never have, though I have tried to.

Mr. FRANK.—I do not think you would have any difficulty if you wanted to.

Mr. McCLANAHAN.—Perhaps not now.

Q. I understand, Mr. Curtis, that none of the

(Testimony of Richard W. Curtis.)

work performed under special contracts appears in Schedule 1.

A. No. We checked it each day to the best of our ability, and on both sides we kept a perfect check on it, and there was every effort to keep it straight.

Q. So that if there is such work, it is an inadvertence?

A. Well, I don't know how that could be, because checking it over, when the work is fresh in the men's mind, and anything that would come up that there was any doubt about would certainly be eliminated at the time.

Q. The men did not have anything to do with preparing Schedule 1, Mr. Curtis?

A. You are getting back to what I mean in preparing Schedule 1—you mean preparing Schedule 1?

Q. I mean this, that if there is any work appearing in Schedule 1 [1405—1317] that should belong to and does pertain to special contracts, it appears there through an inadvertence and a mistake.

A. Well, now, I will tell you. You come back to the way the Schedule 1 was made up from reports and the different foremen, from the checking of the stock order cards, and the checking of the time-cards of the men that did the work every day, and I do not see, with the matter fresh in the minds of the men, where there could be anything belonging to special contracts charged in Schedule 1.

Q. I will reform my question. If there is any work set forth in the enumeration of work found on the first, second and third pages of schedule 1, that

(Testimony of Richard W. Curtis.)

is work belonging to special contracts, it is in there through inadvertence?

Mr. FRANK.—Mr. McClanahan, if there is anything there that does not belong there, you point it out to us and show us that we are wrong, and it certainly will be eliminated now just the same as it would be at the beginning when we offered to check up the work with you. We are entitled to know, if you have any criticism, the exact nature of the criticism, and this hidden and dark way of getting at it is not proper and it is not fair. We contend that there is nothing in there of that nature, but if there is anything and you think there is anything in there, and will point it out to us and point it out here on the examination, we would be very free to admit it if we found it to be incorrect.

Mr. McCLANAHAN.—Q. Answer the question, Mr. Curtis.

A. At the time that I made up schedule 1 that was from the personal equation from the foreman that worked on the job, through rereading and recorrecting his list at the time, when the work was fresh in the minds, at the time, and that is what I accepted.

[1406—1318]

Q. That does not answer my question.

A. Well, to go through that now—

Q. I am not asking you to go through it.

Mr. FRANK.—Q. What he wants to know is whether you intentionally put anything in there that should not be in there, that was contract work?

A. Intentionally put anything in there?

(Testimony of Richard W. Curtis.)

Q. Yes.

Mr. McCLANAHAN.—That was not my question.

Mr. FRANK.—What is it?

Mr. McCLANAHAN.—The record shows.

Mr. FRANK.—Read it. You said “through inadvertence.” What is the difference between inadvertence and doing it intentionally?

(The last question repeated by the Reporter.)

A. What do you mean by “inadvertence”?

Mr. McCLANAHAN.—Q. Through mistake.

A. We took great care in making up this schedule and great caution to prevent any such thing.

Q. That does not answer my question.

Mr. FRANK.—You have admitted these schedules, Mr. McClanahan, in your answer.

Mr. McCLANAHAN.—Q. That does not answer my question.

A. I can't answer it any other way. I don't understand it.

Q. If such work appears in those three pages it appears through a mistake; it is there through a mistake, you understand that? That is my question.

A. Only, I think I can say that the thing was checked up and made up and at the time it was correct.

Q. In other words, you swear now that there is no mistake in that schedule on those three pages?

A. To the best of my ability, in checking up over there—that is, we contend it was correct. [1407—1319]

Q. Who is “we”?

(Testimony of Richard W. Curtis.)

A. I mean by that the different foremen of the different departments.

Q. Did they help you make up that bill?

A. They did not help to make up the bill, only to the extent of each man bringing in his list and reading it back.

Q. You have said that you had those lists in your possession already? A. So I did.

Q. Then what were they bringing in theirs for?

A. Well, they are reports too.

Q. What reports?

A. They bring in their reports—the final orders are in my possession, the list of work, and when I made up this bill, why, I called the foremen in and read over their writing or their list of work that they made up.

Q. That they make up independent of your list of work that you furnished them?

A. I always have a copy of them, but I do that to refresh myself.

Q. Answer my question; the reports that they made up independently of the lists which you furnish them?

A. They keep track of the ships on their list.

Q. Answer my question; is that a report that is independent and separate from the lists which you furnish them?

A. No, it is not independent and separate. The list is still the original list, but they add to it certain changes, etc.

Q. They add to the original list the changes?

(Testimony of Richard W. Curtis.)

A. And make certain marks as to what has been changed, whatever information that is required.

Q. You are speaking of reports; you mean written reports? A. I mean written reports.

Q. Where are those written reports?

A. I told you yesterday, [1408—1320] I believe, that these reports were destroyed, we did not need them.

Q. Now, are you confounding reports with the lists which you furnished?

A. Well, I mean the lists and the reports are the same; I am using the same term to apply to both of them; that is what I mean.

Q. Well, then, the list which you furnished to the foremen at the inception of the work, when the work is finished is changed sometimes?

A. Oh, yes, it is changed, certain changes on it; and then there is comments on it; the foreman makes comments.

Q. And it is from those changed lists that you made up that schedule 1?

A. I took up the schedules and reports and put them together, had the foremen come and we consulted regarding it, and then I made up schedule 1.

Q. From those changed lists?

A. From the lists, yes.

Q. And those lists have been destroyed?

A. Yes.

Q. Did you destroy them? A. I did, yes.

Q. Immediately upon making out the bill?

A. A short time after I made out the bill I de-

(Testimony of Richard W. Curtis.)

stroyed them, yes.

Q. And with them you destroyed your list that you kept in the office? A. I did, yes.

Q. Do you destroy contracts in the same way?

A. What do you mean by destroy contracts?

Q. Where the work is done under a contract do you destroy the contracts after the work is done?

A. Why, we have kept no specific account of contracts in late years owing to the sliding condition of labor and the changes that are constantly going on; we have never stopped to figure them out.

Mr. FRANK.—You are talking about two different things. [1409—1321]

Mr. McCLANAHAN.—Q. I am speaking of your destroying the written evidence of the contracts covering work to be performed by your people?

A. The written evidence, you mean?

Q. Yes. A. Written evidence, a letter or an agreement?

Q. The specifications. A. Why, no.

Q. You do not destroy those?

A. No, not until they become of a certain age, of no value to us.

Q. If there had been a contract in this case for the original work that contract would not have been destroyed or the written evidence of it would not have been destroyed, would it? A. No.

Q. Your contention is that there was no contract?

A. I do not know anything of the contract. Just as I told you, I do not enter into contracts; I do not handle them.

(Testimony of Richard W. Curtis.)

Q. The work to be performed, whether it is contract or time and material work, is treated the same?

A. Treated the same; just a list is given.

Q. If you have introduced in this case any time-cards covering, clearly covering, contract work, that is an inadvertence, is it? A. The time-cards?

Mr. FRANK.—What is the use of that? We can't understand that. I think the law will presume that it is an inadvertence unless you prove that we attempt to commit a fraud on you. The object of **that** kind of examination I can't understand. If you were in court you would not be permitted to do this thing for a minute.

Mr. McCLANAHAN.—Q. Answer the question, Mr. Curtis; Mr. Frank is through with his discussion.

A. Well, there are a good many cards introduced, you know, have contract or special agreed price numbers on, as well the numbers that pertain to these different exhibits, exhibit 1, but are not counted because they both appear [1410—1322] on the same cards, we could not very well eliminate one and not put the card in evidence.

Q. Yes, but where the card contains a single number, "Hilonian" number, that is a number which you have given to schedule 1, and the work shows itself to be contract work, why was that card introduced in evidence?

A. That card is correct, inasmuch as we checked it every day at the time and we knew what the man was working on.

(Testimony of Richard W. Curtis.)

Q. It is correct irrespective of what it shows on its face?

A. You can't always read the face of these cards and tell exactly what has been done, not at present. If you were right on the job and knew what the man was working on and knew what he meant by his inscription or found out what he meant, then you would know whether it was right or wrong. That is the reason we check them every day.

Q. Well, now, a good many cards, Mr. Curtis, bear on their face the words "main bearings," showing the time performed on main bearings; that work comes under schedule 8, which is a special contract, is it not?

A. No, not if it was checked up at the time, that it was on the other number, why it was correct at the time.

Q. So that you think there was work done on the main bearings that come under schedule 1?

A. I can't detail or specify what it was, but I know at the time it was checked up that these things were looked into, and they were satisfactory at the time, and it was correct; to go into the detail of two years ago, why, I don't remember clearly enough for that.

Q. You yourself are relying largely on the fact that the cards at the time were checked up and found to be correct?

A. Why, yes, the cards were checked up, and we seen the work going along; that is the method we

(Testimony of Richard W. Curtis.)

have of determining those things are [1411—1323] correct.

Q. You rely on them irrespective of the fact that there may be something on the face of the cards that shows it to be a wrong charge?

A. Well, I am trying to tell you that the mere wording on the card does not at all times tell you in detail what has been done.

Q. Do you know now whether there was any work done on the brake rig on the reversing shaft except work covered by schedule 7 of the libel?

A. I don't remember.

Q. All work done in making and installing the brake rig on the reversing shaft would properly be charged to No. 5401, would it not?

A. Yes, it would be properly charged until we changed it.

Q. And if it was charged to 5295 it was put in schedule 1? A. Yes.

Q. That is, if the card showing the work done on the brake rig bore the number 5295 it was charged in schedule 1? A. Yes.

Q. And if the card or cards bearing the number 5295 for work on the main bearings, that work was charged to 5295? A. Yes.

Q. Will you please look at schedule 3 of the libel.

A. Yes.

Q. Explain why, Mr. Curtis, there is a duplicate charge there.

Mr. FRANK.—What do you call a duplicate charge? Point it out.

(Testimony of Richard W. Curtis.)

Mr. McCLANAHAN.—The second sheet is a duplicate charge of the first.

Mr. FRANK.—That has already been explained.

Mr. McCLANAHAN.—It has been explained by your saying it has been withdrawn.

Mr. FRANK.—And has been explained otherwise.

A. I went into that in detail.

Mr. McCLANAHAN.—Q. Well, do it again, please. You are under [1412—1324] cross-examination now.

A. Schedule 3, page 2, calls for making up a certain amount of work that was performed on the other side of the bay at the Alameda shop on job number 5528. Then it was sent over to the San Francisco shop.

Q. What was sent over?

A. This material that was made under the schedule. Finished and installed on job number 1818, schedule No. 3, page No. 1, with other additional work, and that both, that is schedule No. 3, page No. 2 and the articles that comprise this additional work that was installed on 1818 were combined into schedule No. 3.

Q. Why was it that you duplicated the charges in the libel?

A. Just as I said, this charge of \$226.35, schedule 3, page 2, was canceled on our books.

Q. But you are suing for it in this libel.

Mr. FRANK.—We are not doing anything of the sort; the mistake of counsel in the case is not chargeable to this witness, and it is withdrawn, and you

(Testimony of Richard W. Curtis.)

were told so.

Mr. McCLANAHAN.—Q. You heard Mr. Frank's statement; is it his mistake that this duplication of schedule 3 appears in the libel? A. Yes.

Q. I will ask you to look at the first page of schedule 3, where you have charged \$12 for pattern work, and I ask you why it is that you charged \$12 on that schedule and \$11.10 on the second page—which is correct?

A. The schedule No. 3, page No. 1, is the correct charge for the work that is called for on that schedule.

Q. You made up both, did you? A. I did, sir.

Q. And that is your explanation?

A. That is my explanation.

Q. You say that the original lists of work that came into the shop was given job number 5295?

A. Yes. [1413—1325]

Q. You also know, do you know, that a balance cylinder was installed on that ship? A. Yes.

Q. Do you know, Mr. Curtis, that that balance cylinder work was given on the time-cards job number 5295?

A. If it is on the time-cards, I believe it was; yes.

Q. Do you know whether that balance cylinder work appeared on the original specifications or not?

A. I don't remember now.

Mr. FRANK.—I guess that is five times you have asked that question.

Mr. McCLANAHAN.—You must be very nervous, Mr. Frank.

(Testimony of Richard W. Curtis.)

Mr. FRANK.—Not at all. It is simply a question of time.

Mr. McCLANAHAN.—I have not the overweaning ability to get at things in a minute that you have.

Mr. FRANK.—It is a protest against an abuse of the opportunities given by this mode of taking testimony.

Mr. McCLANAHAN.—Q. Now, Mr. Curtis, you have referred in your direct examination to the payment of schedules 4 and schedules 9 of the libel and a return to the Matson Navigation Company of the check covering those two schedules or bills, and I remember that you said that the check covered other items or other matters. Why was that check returned?

A. Well, what I remember regarding the check is that the check included those schedules and an item for eleven thousand and some odd dollars that was inserted on the check. I took that to my people and they told me at the time to return it.

Q. The check was for the amount of schedules 4 and 9, as shown by your exhibits 1 and 2, and in addition was for \$11,749, was it not?

A. I don't know how many schedules it covered at present, but I know that there was an item of \$11,000 on it also. [1414—1326]

Q. You know that it covered schedules 4 and 9, do you not?

A. Yes, it must have covered 4 and 9, because I receipted it.

(Testimony of Richard W. Curtis.)

Q. You so testified? A. Yes.

Q. And you don't remember the exact figure in excess of those?

A. No. I only know that there is an item of \$11,000 on that.

Q. Who did you present the check to when you went back to your office?

A. I presented the check to Mr. Eva.

Q. You had examined the check before you presented it, had you not?

A. Yes, I had examined it.

Q. What paper did you give to the Matson Navigation Company as a voucher for the \$11,000 payment?

A. Well, I did not sign any paper for the \$11,000 voucher, because it was in the form of a voucher check that they used.

Q. What was on the voucher check?

A. Well, just the \$11,000.

Q. For what? Payment for what?

A. I didn't go into the thing in detail as to all the exact items. I know I went up there to collect the account and they gave me this check.

Q. Do you mean to say—

Mr. FRANK.—You have the actual check; why don't you produce it?

Mr. McCLANAHAN.—Q. Do you mean to say, Mr. Curtis, that you do not know what the \$11,000 in excess over the payment of schedules 4 and 9 was for?

A. They stated it was for an agreement, yes.

Q. An agreement for the work on the "Hilonian"?

(Testimony of Richard W. Curtis.)

A. That is what they stated.

Q. And you went back with that check to Mr. Eva and reported—

A. I told them at the time that I did not know of any such agreement, that I would take the check, and if it was all right, all right; it was not up to me to decide that matter.

Q. You went back to Mr. Eva with this check and reported to them [1415—1327] what they had said, did you? A. Yes.

Q. That this was a payment on the agreed price for the work on the “Hilonian”?

A. I told them that they had tendered this check to me and that there was an item of \$11,000 there that I did not know anything about.

Q. Well, did you explain to them, your people, what the Matson people had told you it was for?

A. I don't remember the exact words, whether I went into that detail or not. I know that I did not handle that end and I passed that out of my mind. I did not pay any particular attention to that. It is up to Mr. Eva to check that, I do not.

Q. Was Mr. Eva the only one that you saw about the matter?

A. Well, I handed the check over to him; that was all I had to do with the matter.

Q. How long did he keep the check?

A. Well, I don't remember how long he kept it.

Q. You took the check back, did you?

A. I took the check back.

Q. The same day?

(Testimony of Richard W. Curtis.)

A. The same day, yes—I believe the same day.

Q. How long a time had elapsed since the rendition of the bill to the Matson Navigation Company when you received this check?

A. I don't remember now.

Q. Had any time elapsed—had you rendered the bill?

A. Yes; considerable time had elapsed.

Q. When was this check handed to you?

A. The date I receipted that bill, November 24.

Q. November 24. A. 1909.

Q. So that on that date the Matson Navigation Company were claiming that there was a contract for the "Hilonian" work amounting to over \$11,000.

A. I didn't go into a controversy as to a contract [1416—1328] or anything else. I told them at the time I did not know anything about that, and I would take that check to my people.

Q. What did you go down there to collect, Mr. Curtis?

A. I went down to collect the entire account.

Q. That is that you are suing for now?

A. I don't remember the exact figures of it. I know I went down there simply to try and collect it; as a general rule, the Matson Navigation Company at certain periods made payments, and I just happened to be passing by and I dropped in to see if I could get some money from them.

Q. To collect the whole amount that you are suing for?

A. I don't know as I specified the whole amount.

(Testimony of Richard W. Curtis.)

I don't know as I presented any exact figures.

Q. Was that the first time that you knew that the Matson Navigation Company claimed that there was a contract for this work?

A. That was the first time that I was familiar with the matter; yes.

Q. Who did you see when you went back with this check?

A. I turned it over to Mr. Eva.

Q. When you went back to the Matson Navigation Company who did you see then?

A. Mr. Gregg, I believe.

Q. What did you tell Mr. Gregg?

A. I told Mr. Gregg that the check was not satisfactory to the United Engineering Works.

Q. Did you know why it was not?

A. No, I didn't know anything as to why it was or why it was not.

Q. Did Mr. Eva tell you why it was not satisfactory?

A. I can't recall the conversation, whether he told me or not. You see I have nothing to do with that end of the business, and I don't make any inquiries regarding it. I have got nothing to do with that.

Q. So that you have now no recollection of the conversation you had with Mr. Gregg when you went back with the check? [1417—1329]

A. Only I told him it was not satisfactory.

Q. So you remember that part of the conversation?

A. I remember that part of the conversation.

Q. And you can't remember anything else?

(Testimony of Richard W. Curtis.)

A. No. I don't know as I had any conversation regarding it, outside of that, only to turn the check over and bring it back.

Q. You knew at that time that there was a dispute, did you not?

A. Well, as soon as I brought the check back I evidently knew there was something the matter, that they did not accept the check.

Q. After that did you destroy any of the cards pertaining to the ship work on the "Hilonian"?

A. Well, I don't remember.

Q. Have you brought with you, Mr. Curtis, the data which I asked for, the time cards which are rejected by Mr. Frank, the circulating pump contract, the Howden forced draft contract, and the donkey boiler contract?

A. I have not had an opportunity to hunt them up as yet.

Mr. McCLANAHAN.—Well, I will have to defer my further cross-examination until you do.

Mr. FRANK.—Well, you needn't trouble yourself about that for we decline to produce them on the ground it is immaterial. I will have to find out what my rights are in this matter in respect to that. I have my objection at the time you asked for them.

Mr. McCLANAHAN.—I understand you, now, that you decline to produce them?

Mr. FRANK.—Yes, certainly, on the ground they are utterly immaterial, not charged for in here and no connection with the case whatsoever.

Mr. McCLANAHAN.—You decline to produce the

(Testimony of Richard W. Curtis.)

time-cards which your witness has testified to?
[1418—1330]

Mr. FRANK.—Which I rejected; yes.

Mr. McCLANAHAN.—And you decline to produce the evidence of the circulating contract?

Mr. FRANK.—I don't know anything about the circulating contract.

Mr. McCLANAHAN.—Then you do not decline to produce it.

Mr. FRANK.—Wait a minute. I will inquire into that. I do not know what the situation is about that.

Mr. McCLANAHAN.—Do you decline to produce the Howden force draft contract?

Mr. FRANK.—I will inquire into that too. I will give you an answer to that later.

Mr. McCLANAHAN.—Do you decline to produce the donkey boiler contract?

Mr. FRANK.—I will inquire into that.

Mr. McCLANAHAN.—Now, Mr. Frank, I will have to ask for an adjournment of the hearing until Friday morning.

Mr. FRANK.—Why do you want an adjournment?

Mr. McCLANAHAN.—I have to go out of the city on a matter of business that has come up unexpectedly.

Mr. FRANK.—Well, of course, it is understood it won't affect our time.

(An adjournment was here taken until Friday, October 27th, 1911, at 10 A. M.) [1419—1331]

(Testimony of Richard W. Curtis.)

Friday, October 27th, 1911.

RICHARD W. CURTIS, cross-examination resumed:

Mr. McCLANAHAN.—Mr. Frank, have you considered the matter of the production of the circulating-pump contract, the Howden force draft contract and the boiler contract?

Mr. FRANK.—Q. Yes. You have the original of those in your own possession.

Mr. McCLANAHAN.—Of each of them?

Mr. FRANK.—Of each of them.

Mr. McCLANAHAN.—I was not aware of that, I produce, Mr. Frank, a letter of August 26th, 1909, addressed to the Matson Navigation Company and signed by the United Engineering Works per H. P. Gray, together with a carbon copy of a letter dated August 28th, addressed to the United Engineering Works without any signature to it, and ask you if that is the Howden force draught contract.

Mr. FRANK.—What do I know about it?

Mr. McCLANAHAN.—You seemed to know a great deal about it. You told me I had them in my possession.

Mr. FRANK.—You have them. I am not the witness identifying the papers.

Mr. McCLANAHAN.—If you cannot identify it, let me see if the witness can.

Q. Mr. Curtis, I hand you the two letters and ask you if you can identify the contract (handing)?

A. I identify this as a letter written by Mr. Gray, setting forth certain work to be performed on the

(Testimony of Richard W. Curtis.)

Howden draught system for the sum of \$725.

Q. Who is Mr. Gray?

A. Mr. Gray is the secretary of our company.
[1420—1332]

Q. He had power and authority to write that letter, did he?

Mr. FRANK.—It is immaterial.

A. I do not know as to the authority conferred on him. I had nothing to do with the contracts at all. I could not tell you that.

Mr. McCLANAHAN.—Q. Did you ever bill that to the Matson Navigation Company?

A. Yes, sir; I billed that to the Matson Navigation Company.

Q. You billed that contract set forth in that letter?

A. Presumably, yes; the contract set forth in that letter. I know there was a description given to me of the work to be performed on the Howden force draught, and the sum of money set out there that was agreed upon.

Mr. McCLANAHAN.—We offer the two letters in evidence and ask that they be marked Curtis Exhibit No. 5.

Mr. FRANK.—We object to them as incompetent and immaterial. There is no dispute about the contract price or anything connected with the Howden force contract. It is specially admitted by the respondent as being correct, being incorporated in Exhibit No. 10.

(The letters are marked "Curtis Exhibit No. 5," and are as follows:)

[**Curtis Exhibit No. 5.**]

“UNITED ENGINEERING WORKS,
San Francisco, Cal., August 26, 1909.

Matson Navigation Co.

Gentlemen:

Attention of Captain Sanders.

We propose to remove the after side of both uptakes where wasted and put in entirely new plates of #8 steel. Remove present lower tube in Howden force draught system and replace with new. Remove air baffles in hot air space and [1421—1333] replace with new and put everything back in place to satisfaction of owners representative, all for the sum of Seven Hundred Twenty-five (\$725.00) Dollars.

Respectfully Submitted,

UNITED ENGINEERING WORKS.

per H. P. GRAY.”

“Aug. 28—1909.

United Engineering Works,
City.

Gentlemen:—

Your letter of August 26th offering to make certain repairs to the Hilonian for the sum of \$725, is hereby accepted.

Yours truly,”

Mr. McCLANAHAN.—Q. Mr. Curtis, I hand you what purports to be a carbon copy of a letter dated “San Francisco, Cal., January 18th, 1909,” addressed to the Matson Navigation Company, signed “United Engineering Works, per H. P. Gray, Sec-

(Testimony of Richard W. Curtis.)

retary," and ask you if the circulating-pump contract referred to in the first paragraph of that letter was ever billed by you to the Matson Navigation Company (handing).

Mr. FRANK.—We object to this and call on you to produce the original. It only purports to be a bid, and has not got the acceptance attached to it.

Mr. McCLANAHAN.—I will say in reply to that, I have made search for the original of this, and this paper submitted to the witness is the only thing that I can find, therefore I call [1422—1334] upon the witness to produce his carbon copy of that letter.

Mr. FRANK.—Your making search for it is not conclusive. It does not appear that the company, or secretary of the company, or the regular custodian of the company, has made any search for it, or are unable to find it.

Mr. McCLANAHAN.—Q. Mr. Curtis, please answer the question, if you can, from an examination of that paper.

Mr. FRANK.—We object to it. Of course, the original would be in your possession and not in our's.

A. I cannot recognize this paper. If it were on our own letter-head that is about the only way I could make a strict identification of this thing or any earmarks on it.

Mr. McCLANAHAN.—Q. I am not asking you to do that. I want you to say whether from an examination of this your memory is refreshed as to whether you billed that circulating-pump contract to the Matson Navigation Company.

(Testimony of Richard W. Curtis.)

A. Yes, sir, I billed a circulating-pump contract to the Matson Navigation Company.

Q. And in what amount? A. \$1,350.

Q. And it was billed subsequent to the "Hilonian" leaving the shop of your company?

A. Yes, sir, I believe it was, to the best of my knowledge.

Q. On the occasion in dispute?

A. What do you mean by "occasion in dispute"?

Q. I mean it was billed subsequent to the vessel leaving your shops on the occasion in dispute?

A. Yes, sir.

Mr. McCLANAHAN.—Now, Mr. Frank, I do not find any record of the donkey-boiler contract among my papers. Have you got it? Can you save time by producing it, if you admit there was such a contract? [1423—1335]

Mr. FRANK.—Have you not got the original?

Mr. McCLANAHAN.—I have not.

Mr. FRANK.—Why not?

Mr. McCLANAHAN.—I do not know.

Mr. FRANK.—What has become of it?

Mr. McCLANAHAN.—I have not been able to find it. I suppose we can prove that we have made search for it. I have asked for it on several occasions. If you have got it it will save time. I will call for it on the production of my witnesses showing that they have made search for it. There cannot be but one set of papers covering that contract, and we have not got them.

Mr. FRANK.—I do not see it is material, but I am

(Testimony of Richard W. Curtis.)

not disposed to make any unnecessary difficulty by an immaterial thing. There it is (handing).

Mr. McCLANAHAN.—We offer in evidence the contract produced by Mr. Frank, being copy of a letter dated November 14th, 1908, addressed to the Matson Navigation Company and signed by the United Engineering Works, to which is attached a paper entitled “Specifications for renewal of tubes in donkey-boiler of the S. S. ‘Hilonian,’ ” and also a letter of November 14th, 1908, addressed to the United Engineering Works and signed “Matson Navigation Company, W. H. Sellander,” and ask that it be marked Curtis Exhibit No. 6.

Mr. FRANK.—Objected to upon the ground that it is irrelevant and immaterial.

(The papers are marked "Curtis Exhibit No. 6" and are as follows:) [1424—1336]

[Curtis Exhibit No. 6.]

“Nov. 14, 1908.

Matson Navigation Co.,
268 Market St., City.

Gentlemen:—

We propose to renew tubes in the Donkey Boiler on the SS. 'Hilonian' as per specifications submitted for the sum of Two hundred and fifty-nine Dollars (\$259.00).

Respectfully submitted,
UNITED ENGINEERING WORKS.

By _____, Sect'y."

SPECIFICATIONS

for

Renewal of Tubes in Donkey Boiler of the

S/S 'Hilonian.'

64 plain tubes 3-1/4" dia. #10. gauge

20 stay tubes 3-1/2" " #6 "

Tube sheets and connections to be thoroughly sealed and coated with white zinc and coal oil before the new tubes are put in. All material and work to comply with the requirements of the U. S. Inspectors and to be satisfactory to the owners or their representative.

MATSON NAVIGATION COMPANY,

268 Market Street,

San Francisco, Cal., November 14, 1908.

United Eng. Wks.,

254-256 Spear St., City.

Dear Sirs:—

We hereby award you the contract for the renewing of the [1425—1337] tubes in the donkey boilers on the S. S. 'Hilonian,' as per bid for \$259, submitted November 14th.

Yours very truly,

MATSON NAVIGATION COMPANY,

W. H. SELLANDER."

Mr. McCLANAHAN.—Mr. Frank, cannot you do the same favor for me on the circulating-pump contract?

Mr. FRANK.—I am willing to do favors for you if you can show me any reason wherein it is material. I do not want to give you all my records just as a

(Testimony of Richard W. Curtis.)

matter of curiosity, or for some hidden purpose that I do not know about. Naturally, I would not give you things that I do not know the purpose of.

Mr. McCLANAHAN.—Mr. Frank, of course I am not asking you for your records, but I am asking you for records that are yours and mine. I am simply stating that I have been unable to find my end of it. The purpose of the request is this; we shall contend that in the bill sued for in this suit there is work included covered by these respective contracts.

Mr. FRANK.—Then you should point out the work that is included. We have a right to have that pointed out so as to give us an opportunity for explanation.

Mr. McCLANAHAN.—That is outside of the present matter.

Mr. FRANK.—Until you have pointed it out, I do not see how it becomes material and therefore I am not prepared to produce anything.

Mr. McCLANAHAN.—Very well, I will have to call for it at a later time.

Q. Mr. Curtis, am I to understand that if there had been a contract for the original, or covering the original list of [1426—1338] work which was turned in to the United Engineering Works, that it would have been treated in the office differently than the list of work which was turned in was treated?

A. No, sir. It would have been treated the same. That is, I mean the same in this matter, that if it were a contract turned in to me in the office I would know that a certain amount of work was

(Testimony of Richard W. Curtis.)

agreed upon for a certain set sum; and if there was a ship at the yard, and the captain or engineer, who might be in charge, would have a list of work to perform, I would treat it in the same manner and give it a number, if that is what you mean.

Q. No. I mean in the handling of the written evidence of the contract in the office files and records, the contract would have been treated differently from the specifications without contracts.

A. No, sir; in the office files everything that comes in is stamped with a rubber stamp and referred, and filed according to the numerical order.

Q. If there had been a contract there would have been no destruction of the original specifications covering that contract, as you have specified there was a destruction of the original list of work?

A. There was a destruction of the original list of work.

Q. If there had been a contract there would not have been any such destruction.

Mr. FRANK.—I object to that mode of attempting to prove that there was a contract. If there was a contract in this case, you have in your possession the contract, both the letter which you have produced and the acceptance if there was any acceptance. There is no such paper offered, and the conclusion [1427—1339] of the witness or the manner in which he handles it would not tend to prove what is a contract or what is not a contract. You are perfectly familiar with all the terms of your agreement with respect to that original list, and have all the papers material in

(Testimony of Richard W. Curtis.)

your possession. They are the best evidence and should be produced if there are any. Any other I object to as immaterial.

Mr. McCLANAHAN.—Q. Mr. Curtis, answer the question.

A. If there were any contract or agreed price that comes into the office the description embodied in the letter of course would be preserved.

Q. Or if there were specifications connected with the letter which constituted the contract or the letters which constituted the contract would be preserved, would they not?

A. The complete records would be preserved, yes.

Q. But in the present case of the "Hilonian" there was no such record for preservation?

A. Not that I know of. I do not know of the contract. I did not pay any special attention to it. It was never called to my attention.

Q. That is just the point. If you had known of the contract there would be a preservation of the evidence of that contract in the files of your office?

A. As a general rule, they would preserve whatever papers they received.

Q. Mr. Curtis, you have had a good deal of experience in the past 12 years with timekeepers?

A. Yes, sir; I have kept time myself.

Q. I mean timekeepers that have been employed by ship owners? A. Yes, sir.

Q. A great deal of experience, have you not?

A. Yes, sir.

Q. Do they pursue a fixed routine or method of

(Testimony of Richard W. Curtis.)

keeping time as a rule? [1428—1340]

A. As a general rule, there is a man's personal methods of work in different cases.

Q. As a rule, there is a general method of keeping time? A. A general method.

Q. And you are familiar with that general method, are you?

A. Yes, sir; I am familiar with that general method.

Q. What is the purpose of a ship owner—what purpose is to be accomplished by a ship owner keeping time on the work being done at your shop?

A. I have never gone to the ship owner and asked him for what purpose he puts the timekeeper on a job. Only I know this; the purpose, so far as I am concerned, is that we should check up the time and the material when it goes into that job.

Q. The object of the timekeeper, as far as you know, then, is to keep an accurate count of the time and the material that goes into the job?

A. Yes, sir. That is, we both meet and agree as to the time that is on the ship by checking back and forth. That is the custom.

Q. And the ultimate object is to determine the actual time and material put into the ship?

Mr. FRANK.—We object to what the ultimate object of anybody is in such a proceeding. The witness has testified as to the customary method of keeping time. You had a timekeeper on her—

Mr. McCLANAHAN.—Now, Mr. Frank, please do not discuss the matter. Put in your objection, and

(Testimony of Richard W. Curtis.)

leave it there.

Mr. FRANK.—Mr. McClanahan, I will make my objection in my own form. Every time I make an objection you want to tell me how to make it, and you want to run this whole case from beginning to end. You do what you want to do in your own way, [1429—1341] and when I do anything you want me to do it in your own way, too, which is impossible.

Mr. McCLANAHAN.—I am suggesting that you are only incumbering the record.

Mr. FRANK.—That is your idea; you are encumbering the record from A to Z with a lot of immaterial cross-examination. Let us not have any discussion about it and allow me to conduct my case in my own way and you can conduct your case in your own way.

Mr. McCLANAHAN.—The Court will determine that.

Q. Answer the question, Mr. Curtis.

Mr. FRANK.—Let me get in my objection first.

Mr. McCLANAHAN.—You mean your discussion, Mr. Frank.

Mr. FRANK.—Whatever you have a mind to call it.

Mr. McCLANAHAN.—All right.

Mr. FRANK.—I should like to know how the Court is going to pass on the objection if I do not give a reason for it. Now, Mr. Reporter, read my objection as far as I got. (The Reporter reads the objection)—and you are bound by the agreements of your timekeeper unless you can show that there was

(Testimony of Richard W. Curtis.)

fraud on our part.

Mr. McCLANAHAN.—Q. Answer the question, Mr. Curtis.

A. The object is to keep track of the time that is put into the ship. Some timekeepers keep track of material and some do not. In most cases, they just keep track of the time on a ship. The ultimate object is whatever he keeps track of it for the owners.

Q. What is the value, Mr. Curtis, of a timekeeper who keeps only the time on the ship, when there is shop time as well? [1430—1342]

Mr. FRANK.—I object to that also. I do not see what we have got to do with that. If your timekeeper has not kept shop time it is no fault of ours.

A. I have never stopped to place a value on timekeepers who do not keep time on the shop. I know very few keep the shop time.

Mr. McCLANAHAN.—Q. Very few keep the shop time? A. Yes, sir.

Q. Then what is the value of a timekeeper on the job?

A. I am not the man to instruct the timekeeper what he should do and what he should not do. That is the duty of the owner of the property who the work is being performed for.

Q. So long as you, representing the work, can have an understanding with the timekeeper who only keeps time on the ship, you are satisfied, are you?

A. That is the general custom. We never have insisted on the man keeping the time in the shop. That is up to the man himself.

(Testimony of Richard W. Curtis.)

Q. That time is as important in ascertaining the amount of labor put on the work itself as the ship time. is it not?

A. That may be; that is up to the judgment of the man who is keeping the time on the other side.

Q. It is up to the judgment of the shipowner?

A. Of the shipowner, yes.

Q. It is your opinion, is it not, that where a shipowner only has a timekeeper on the ship itself, that is an ineffective method of knowing the time put on the job.

Mr. FRANK.—I object to this. His opinion, and your arguments to the witness of this proposition, is entirely improper. You can argue what you please to the Court, whether effective or ineffective. Whether it was effective or ineffective [1431—1343] is up to you. He is your servant and not ours. We are not directing him what to do and what not to do, and cannot be held responsible.

Mr. McCLANAHAN.—Q. Answer the question.

A. In my experience a timekeeper, whether he keeps the time only on the ship or in the shop, as a general rule goes through the shop, and a man that is experienced and knows the parts and has a good idea of the work, can very readily judge, or nearly judge, as to the time.

Q. That is, the time put on the entire job?

A. Yes, sir.

Q. Both in ship and shop?

A. Yes, sir, both in ship and shop.

Q. Do you know whether Mr. Putzar performed

(Testimony of Richard W. Curtis.)

his duties on the line suggested in your last answer?

Mr. FRANK.—We object to that also as immaterial. He is not a judge of what Mr. Putzar's duties were. If Mr. Putzar was not keeping time according to your ideas you should have put on another timekeeper.

A. I do not know because I did not follow Mr. Putzar around.

Mr. McCLANAHAN.—That is the end of my cross-examination.

Mr. FRANK.—Now, Mr. McClanahan, before we begin in redirect examination, you have made certain suggestions in your cross-examination of certain time-cards, or stock cards, bearing numbers which you claim should not be charged in the bill, without specifying what the cards were. I demand, now, that you specify the particular cards to which you object, in order that we may be able to examine them and explain them, if they need any explanation whatsoever. You have not specified any of them.

Mr. McCLANAHAN.—I decline to furnish to the libelant any fruits of my efforts in examining and segregating the evidence [1432—1344] produced by the libelant in this case.

Mr. FRANK.—Do you claim that there are cards of the nature which has been covertly suggested in your cross-examination?

Mr. McCLANAHAN.—I do.

Mr. FRANK.—Then we demand a specification of them in all fairness, that we may be able to examine

(Testimony of Richard W. Curtis.)

them and explain them, if they are open to explanation.

Mr. McCLANAHAN.—The compliance which you request, if I felt so disposed to comply with it, would entail much labor and I do not care to comply with it.

Mr. FRANK.—Very well. Then we will adjourn and refer that to the Court, and see whether you can make those covert charges without giving us an opportunity of meeting them.

Mr. McCLANAHAN.—Mr. Frank, this adjournment of the Court is a very serious business with me. Time is the essence of my present engagements.

Mr. FRANK.—So it is of mine. I believe I have as many engagements as you have, but I think we are entitled to fair play in this case.

Mr. McCLANAHAN.—You are getting fair play in this case.

Mr. FRANK.—No, we are not.

Mr. McCLANAHAN.—You should know your case, and the exhibits and the evidence you have introduced better than I should. You should know what I know and perhaps more than what I know. If I am to examine your case for you so as to enable you to whip it into shape I had better send in for a retainer to the United Engineering Works.

Mr. FRANK.—What we should know and what we do know is one thing. We cannot know what you claim, and most undoubtedly [1433—1345] wrongly claim to be an incorporation into the bill of charges shown by cards that should not be charged

(Testimony of Richard W. Curtis.)

in there. We have a perfect right to be apprised of it as we have of anything else, so that we may fairly meet it in this case, and not be delegated to an unnecessary controversy hereafter. You should put your case in fairly.

Mr. McCLANAHAN.—All of the proof of your case has been presented by you. You should know what it is. You should know that there is not, or that there is, such evidence as I have suggested. If you claim there is not, it is a matter of issue between us to be threshed out on the argument of the case.

Mr. FRANK.—If you claim there is, it is up to you to point it out.

Mr. McCLANAHAN.—I will do so on the argument of the case.

Mr. FRANK.—No. It is up to you to point it out now. Your claim may be ill-founded and be open to explanation by the testimony which would be beyond the reach of counsel on the argument.

Mr. McCLANAHAN.—We need not discuss it. I decline to do it.

Mr. FRANK.—Very well. We will see what the Court has to say about it. If it says you do not have to do it we will go on.

Mr. McCLANAHAN.—Why cannot you go on with Mr. Curtis now and get rid of him except on that point?

Mr. FRANK.—That point is very material at the present time. I see very little in your cross-examination outside of that that would require me to examine Mr. Curtis on.

(Testimony of Richard W. Curtis.)

Mr. McCLANAHAN.—Well, then, just say that you have no redirect [1434—1346] except on that point and let us proceed.

Mr. FRANK.—Are you running me again, Mr. McClanahan?

Mr. McCLANAHAN.—I am making suggestions; yes.

Redirect Examination.

Mr. FRANK.—Q. Mr. Curtis, in the course of your examination there were certain numbers upon Mr. Putzar's time-sheets that you put on yourself and which you said were put there in an attempt to make a segregation of the charges. I will ask you whether or not those numbers were arbitrary numbers, or whether they were identified in any way with the job numbers upon this job?

A. The numbers that I placed on the sheet were not identified in any way with the job. It was just done merely to put numerals on the sheets for segregation, at the time that the segregation was asked for.

Q. Were they arbitrary?

A. What do you mean by "arbitrary"?

Q. I mean were they intended to identify the particular labor opposite which they stood as belonging to the particular job number?

A. No, sir, they were not; not for that purpose.

Q. I understood you to say upon your original examination that all of the time-sheets of Mr. Putzar, except those from September 17th to September 27th, are in Mr. Putzar's own handwriting?

(Testimony of Richard W. Curtis.)

A. Yes, sir.

Q. You said that you had seen Mr. Putzar years ago on the Oceanic Dock. What relation did he sustain to the Oceanic people?

A. Well, at that time when I referred to Mr. Putzar, he was Superintending Engineer of the dock.

Q. For the Oceanic Steamship Company?

A. For the Oceanic Steamship Company.

Mr. FRANK.—Now, Mr. McClanahan, I think we had better [1435—1347] refer this matter to the Court. I presume 2 o'clock would be a convenient time for you to get the attention of the Court.

Mr. McCLANAHAN.—Why cannot we go right up now?

Mr. FRANK.—In the first place, I do not think we could get the attention of the Court now; in the next place, I want to get the particular part of the record to refer to the Court, written up, so that we may not waste its time, and present it intelligently.

Mr. McCLANAHAN.—Suppose on investigation, Mr. Frank, we find that the Court is not available either to-day or to-morrow. I object to this case being halted on this ground. I am willing to have you conserve all your rights, but let us make progress. If this is your last witness, I am prepared to go on this afternoon at 2 o'clock with my case and we ought to do it. We have consumed a great deal of time in the case and to consume more unnecessary time it seems to me is uncalled for.

Mr. FRANK.—How can it be unnecessary? You

(Testimony of Richard W. Curtis.)

specify your cards and that is the end of the controversy.

Mr. McCLANAHAN.—I decline to do that. I am willing to have you conserve your rights and take this matter up before the Court at some convenient time, and in case you are sustained in your contention, to continue your redirect examination with Mr. Curtis. But my point is do not let us delay the progress of the case.

Mr. FRANK.—Very well.

Mr. McCLANAHAN.—Subject to your right to do that, and subject to your right of further redirect examination of Mr. Curtis, let me begin to put in my case.

Mr. FRANK.—That satisfies me, and we will adjourn this matter of going before the Court to some other time. [1436—1348]

Mr. McCLANAHAN.—That is it exactly. If he is your last witness it is understood that you close your case with that exception.

Mr. FRANK.—Or anything that may transpire in reference to his examination that makes it necessary for me to go further.

Mr. McCLANAHAN.—On the point in controversy.

Mr. FRANK.—Anything that may arise on the further or cross or redirect examinations.

Mr. McCLANAHAN.—Yes. Subject to that you close.

Mr. FRANK.—Yes.

(Testimony of Richard W. Curtis.)

Mr. McCLANAHAN.—And we will go on at 2 o'clock at my office.

(A recess was here taken until 2 P. M.)

AFTERNOON SESSION.

(An adjournment was here taken at the request of the respondent until to-morrow, Saturday, October 28th, 1911, at 10 A. M.)

Saturday, October 28th, 1911.

(An adjournment was here taken at the request of the respondent until Monday, October 30th, 1911, at 10 A. M.) [1437—1349]

Monday, October 30th, 1911.

**[Testimony of Harry B. Gregg, for Respondent
(Recalled.)]**

HARRY B. GREGG, recalled for the respondent.

Mr. McCLANAHAN.—Q. You are secretary, I believe, of the Matson Navigation Company?

A. I am.

Q. Have you made search for a bid for a circulating pump to be made and installed on the "Hilonian" by the United Engineering Works?

A. I did.

Q. Made search in the files of the office?

A. Yes, sir.

Q. Could you find the original bid at all?

A. I was unable to find it.

Mr. McCLANAHAN.—I will ask you now, Mr. Frank, to produce your copy of the bid and all the other papers that evidence the contract.

(Testimony of Harry B. Gregg.)

Cross-examination.

Mr. FRANK.—Q. Mr. Gregg, how does it happen that you have not got it in the files?

A. I don't know.

Q. Don't you keep all your contracts?

A. They are supposed to be on the files unless it has been misplaced. I made a very thorough search for it, though, without being able to find it.

Q. Have you no index to your files?

A. Yes, sir; but it was not where it should have been.

Q. Did you find the acceptance, the copy of the acceptance? A. No, sir.

Q. Whose custody are those in?

A. They should be in mine.

Q. What do you mean by "should be in yours"?

A. Unless somebody has removed them. I cannot watch the files all day long to see that the letters are not taken out.

Q. Who else has access to them besides you?

[1438—1350]

A. Everyone in the office.

Q. Do they take them out without consulting you?

A. They probably would.

Q. Is that the general condition in your office?

A. It would be very natural that it could have been taken. One of the stenographers might have taken it out. They have a good many letters passing back and forth in the day, and I might have been absent at the time.

(Testimony of Harry B. Gregg.)

Q. Did you make any inquiry of the stenographers?

A. I have, and they don't remember it; they do not remember having taken it.

Q. Did you ever miss any of your other files in that way?

A. I don't remember just at the present time. I would not be a bit surprised, though.

Q. It is not a question of whether you are surprised or not. A. I don't remember.

Mr. FRANK.—That is all.

Mr. McCLANAHAN.—Will you produce the copy, Mr. Frank? It is in your possession. And the original of the acceptance, if any.

Mr. FRANK.—We do not consider it material.

Mr. McCLANAHAN.—What material? The request to have it produced?

Mr. FRANK.—The contract is immaterial. You are calling for the production of immaterial papers.

Mr. McCLANAHAN.—I stated in my last statement with reference to this contract that we intended to show that labor and material which was contracted to have been performed under the circulating pump contract has been charged against us in the present bill.

Mr. FRANK.—Will you point out the labor and material that you think has been charged there?
[1439—1351]

Mr. McCLANAHAN.—We are getting away from the matter. I want you to produce the original of the acceptance, and the copy of the bid.

(Testimony of Harry B. Gregg.)

Mr. FRANK.—We cannot have the original; it must be in your possession.

Mr. McCLANAHAN.—The original of your acceptance and the copy of the bid.

Mr. FRANK.—You have made your demand; go on.

Mr. McCLANAHAN.—I am waiting for the production.

Mr. FRANK.—I am not going to produce it under the circumstances.

[Testimony of William Matson, for Claimant.]

WILLIAM MATSON, called for the claimant, sworn.

Mr. McCLANAHAN.—Q. You are the president of the Matson Navigation Company?

A. Yes, sir.

Q. Are you also the managing director on this coast?

A. I don't know about on this coast, but I am of the Matson Navigation Company.

Q. And you are the chief executive officer of that company? A. Yes, sir.

Q. Do you know the libelant in this case, the United Engineering Works? A. Yes, sir.

Q. For how long a period of time have you known the libelant?

A. Well, I don't really recall; some 10 or 15 years. I don't remember exactly.

Q. What has been the nature of your dealings with the company?

A. We have had a good deal of dealings together.

(Testimony of William Matson.)

Q. Have you had dealings prior to the matter in controversy?

A. Yes, sir; I think for a good many years.

Q. Who are the officers of that company—do you know them? [1440—1352]

A. I know Christy and Gray. I have mostly done all the business with Mr. Gray.

Q. Do you know what position Mr. Gray holds?

A. He seems to be the man that always goes around and get the contracts. I don't know what position he holds with the company.

Q. Do you know Mr. Eva, the president of the company? A. I know him slightly, that is all.

Q. The Matson Navigation Company is the owner and was the owner of the steamship "Hilonian" in the months of August and September, 1909?

A. Yes, sir.

Q. Prior to the month of August, state whether or no the steamship "Hilonian" was in need of repairs in her engine-room equipment.

A. Yes, sir. We had specifications drawn up and had different people bid on it, to do some repairs.

Q. Who drew up those specifications?

A. Mr. Klitgaard. He was at the time chief engineer.

Q. Mr. Carl Klitgaard?

A. I think that is his name.

Q. I show you Siversen's Exhibit "A" and ask you if you can at all identify that paper in connection with the specifications drawn up by Mr. Klitgaard (pointing).

(Testimony of William Matson.)

A. It looks like the same paper.

Q. That is the matter of the paper, or the paper itself?

A. The paper itself and the matter on the paper.

Q. It looks like the original specifications as drawn up?

A. Yes, sir, as I said before. I have not seen it for so long now that it would be pretty hard to swear it is exactly the same paper, but the reading of it is the same.

Q. When these specifications were first prepared by your chief engineer, were they submitted to anyone for figures?

A. They were submitted to the Risdon, the Union and the United Engineering [1441—1353] Works for bids.

Q. By the Risdon you mean the Risdon Iron Works? A. Yes, sir.

Q. What do you mean by the Union?

A. Union Iron Works.

Q. Were bids made for the work called for, specifications submitted to the Matson Navigation Company? A. Yes, sir.

Q. By whom?

A. By the different people. Gray was for the United Engineering Works and I think—I don't remember the name—what is the fellow's name at the Risdon—Peterson—he was in there from the Risdon. And the Union Iron Works, I don't remember the man who was in there at that time when the bids were opened.

(Testimony of William Matson.)

Q. You are clear that the United Engineering Works, the Union Iron Works and the Risdon did submit bids under the specifications which had been submitted to them? A. Yes, sir.

Q. Do you remember when those bids were opened originally? A. Yes, sir.

Q. What day was it, let me ask you further?

A. The first bid, was it not in August?

A. No, July.

Mr. FRANK.—Q. What are you referring to now, Captain? A. I am referring to the first bid.

Q. The first paper?

Mr. McCLANAHAN.—Q. Do not put it back in your pocket, Captain. He is asking what you are referring to. A. I am referring to the date.

Mr. FRANK.—Q. What is that paper you are referring to, that you have just taken out, that you are looking for a date on?

A. That was the matter of the bid that I took from the books this morning; I will show it to you.

Q. You took it off your books this morning?

A. Yes, sir. [1442—1354]

Mr. McCLANAHAN.—Q. Were the bids opened on the day stated for opening the bids on the original specifications? A. Yes, sir.

Q. And if that date was July 27th, 1909, they were opened on that day? A. Yes, sir.

Q. Where were these bids opened?

A. In the Matson Navigation Company's office.

Q. Who was present when the bids were opened?

A. Mr. Gray and one from each of the others; one

(Testimony of William Matson.)

from the Union and one from the Risdon.

Q. That is, the Union had a representative.

A. Yes, sir.

Q. And the Risdon had a representative?

A. Yes, sir.

Q. And Mr. Gray represented the United Engineering Works? A. Yes, sir.

Q. Who else was present besides those three gentlemen?

A. I think Captain Saunders and myself.

Q. State whether or no the bids after being opened were accepted. Any of them.

Mr. FRANK.—Objected to as calling for a conclusion of law from the witness. Whether they were accepted or not, will be determined by the Court from exactly what was done and said on that occasion.

Mr. McCLANAHAN.—Q. Answer the question.

A. What question shall I answer?

Q. Whether any of the bids were accepted at that time. A. They were rejected by me.

Q. In what way?

A. Because I thought they were too high.

Q. In what way were they rejected, by word of mouth or in writing, or how?

A. By word of mouth.

Q. Did you at that time and after the verbal rejecting of these bids have a conversation with Mr. Gray? A. Yes, sir.

Q. What was the conversation?

A. He said that he wanted the job, and he thought that I ought to put a timekeeper on there and he

(Testimony of William Matson.)

[1443—1355] would guarantee to do it within the figures that the bid was. Still I felt that the bid was too high, and it could be done a little cheaper, so I called for a second bid.

Q. I am confining your statements to this conversation. You say he suggested that you put a time-keeper on the job? A. Yes, sir.

Q. Did he name any timekeeper?

A. No, sir. He suggested two or three men, I don't remember their names now.

Q. Who were those that he suggested?

A. Putzar was one, and there were two other fellows; I don't remember.

Q. He suggested three men?

A. Yes, sir. He said there were two or three men who were pretty good men around town. Then I asked him how would Mr. Putzar do. He said he would be very glad to work with him.

Q. Did he suggest Mr. Putzar or did you suggest him? A. I would not want to say that.

Q. Did you know Mr. Putzar at that time?

A. No, sir. I did not know him.

Q. You did not know Mr. Putzar? A. No, sir.

Q. Had you ever heard of him before that time?

A. No, sir.

Q. But you know that Mr. Putzar's name was mentioned in that conversation?

A. There were two or three, Mr. McClanahan, who were mentioned there. I do not remember exactly what the names were.

(Testimony of William Matson.)

Q. Of the two or three, was Mr. Putzar's name mentioned?

A. I would not want to say whether it was or not. I mentioned Mr. Putzar's name myself, and he said he would be a first-class man.

Q. If you had not seen or did not know Mr. Putzar's name at that time or Mr. Putzar at that time, do you know now how you happened [1444—1356] to mention his name?

A. I think I had spoken to the Oceanic Steamship Company, to Mr. Samuels, about him—no, that was not until afterwards. You had better strike that out. I don't remember that.

Q. Did you speak to Mr. Samuels of the Oceanic Steamship Company about Mr. Putzar?

A. I think I did afterwards.

Q. Afterwards? A. Yes, sir.

Q. After this meeting, you mean? A. Yes, sir.

Q. After this conversation with Mr. Gray on July 27th, what did you do with reference to these specifications? A. I advertised for another bid.

Q. Who did you ask for bids from?

A. The same people.

Q. Did you ask for bids from the United Engineering Works? A. Yes, sir.

Q. I show you, Captain Matson, Respondent's Exhibit Christy "A," and ask you if you can identify that letter. (Handing.) A. Yes, sir.

Q. What is it? A. That is one of the bids.

Mr. FRANK.—Let me see it.

(Testimony of William Matson.)

Mr. McCLANAHAN.—Q. What bid was it, Captain?

Mr. FRANK.—One moment, Mr. McClanahan. Don't work so fast.

Mr. McCLANAHAN.—It is an exhibit in this case.

Mr. FRANK.—I know, but I want to play with you in this game.

Mr. McCLANAHAN.—If you want to play, I am willing; go on.

Mr. FRANK.—It takes two nines to play a baseball game.

The WITNESS.—There are three nines there, Mr. Frank.

Mr. McCLANAHAN.—Q. Is that the original bid of the United Engineering Works? A. Yes, sir.

Q. That is the bid that you referred to as having been rejected? [1445—1357] A. Yes, sir.

Q. As a consequence of advertising for new bids, did you receive any bid from the United Engineering Works? A. Yes, sir, I did.

Q. I show you Respondent's Exhibit Christy "B," and ask you if you can identify that paper. (Handling.)

A. Yes, sir; that is the second bid.

Q. The second bid of whom?

A. The United Engineering Company.

Mr. FRANK.—Let me see it.

Mr. McCLANAHAN.—Q. At the time of the receipt of that bid, dated August 2d, by the Matson Navigation Company, do you know whether the steamship "Hilonian" was here at this port?

(Testimony of William Matson.)

A. I think—I am not sure now about that—yes, I think she was here. You know the first time we got the bid she had to make a trip and I am not positive where the ship was when the second bid was made. I think she was here.

Q. After receiving this bid of August 2d, did you have any conversation with any officer of the United Engineering Works with reference to it?

A. Well, I had several conversations with Mr. Gray.

Q. What was the first conversation with Mr. Gray, about the bid of August 2d?

A. Well, he wanted the job awful bad, because he said that he had several small contracts on the ship, and he wanted the ship over at the yard. I felt that the bids were still higher than they should be, and he suggested to me that we put a timekeeper on and he would guarantee that he would do the job within that figure, and if the crank-shaft did not have to come out there would be a reduction of a couple of thousand dollars.

Q. What was the result of the conversation?

A. I told him I would give him the job and accept his bid. [1446—1358]

Q. Where was this conversation held, this second one? A. In my office.

Q. Do you know how Mr. Gray got there, how he happened to be within your office?

A. I think I telephoned to him; I am not sure now.

Q. Do you remember about what you said to him when he first came into the office on that occasion?

(Testimony of William Matson.)

A. I told him I would accept his bid.

Q. What was the conversation that followed the statement of yours that you would accept his bid?

A. He said that he would be glad to take the job and do it within the limit of that amount of money.

Q. Did you at that time have any conversation about the crank-shaft? A. Yes, sir.

Q. What was that conversation?

A. That if it did not have to come out there would be a reduction of a couple of thousand dollars.

Q. This bid that you said you would accept, what was the bid? A. \$11,749.

Q. Was it or was it not this letter of August 2d? Is that the bid that you refer to (handing)?

A. Yes, sir.

Q. Now, Captain, with reference to this crank-shaft, had there been any discussion with Mr. Gray or any member of the United Engineering Works prior to this acceptance of the bid with reference to that crank-shaft?

A. Well, there had been some conversation in regard to whether it had to come out, or not. I don't remember exactly. Christy went out on the bay one day when the ship came in to look at it, and I think he thought it was all right.

Mr. FRANK.—Let me caution you, Captain, you are not testifying here as to what you think or what you did not see, or what [1447—1359] someone reported to you. You are testifying to the things that you know.

The WITNESS.—All right; I know that.

(Testimony of William Matson.)

Mr. FRANK.—When I say that you know, I mean conversations that you had or things that you saw.

Mr. McCLANAHAN.—Your remarks to the witness, Mr. Frank, are entirely uncalled for. When the witness is making hearsay statements you have the privilege of objecting to them. You are not here to instruct the witness as to what he shall do or shall not do, or what he shall say, or what he shall not say, or how he shall say it. Your only right is to object to the evidence of the witness as it is given. I object to your instructing my witness as to what he shall say or how he shall say it.

Mr. FRANK.—You have been making a great many protests about filling up the record. Let me suggest to you that the easiest way not to fill up the record is to caution your own witness not to testify to hearsay testimony which requires a great deal of questioning to straighten out.

Mr. McCLANAHAN.—I am glad that you recognize that it is my province and not yours.

Mr. FRANK.—I shall do as heretofore. I shall do what I think is right and proper, without receiving instructions from you on the subject.

Mr. McCLANAHAN.—Q. You knew the question of the removal of the crank-shaft as called for by the specifications was an undetermined one?

A. Yes, sir.

Q. Did Mr. Gray know at the time of your acceptance of the bid of August 2d? [1448—1360]

Mr. FRANK.—I object to that. That is asking for a conclusion again. If he had had any conversa-

(Testimony of William Matson.)

tion with Mr. Gray on the subject, he can relate the conversation. To testify that Mr. Gray knew one thing or another thing is not proper.

Mr. McCLANAHAN.—Q. Answer the question. Did Mr. Gray know that that question was an undetermined one at the time of your acceptance of the bid of August 2d?

A. I certainly do not see how you can expect me to remember away back on those things.

Q. You have stated that he said in this conversation that if the crank-shaft was not removed that there would be a reduction approximating \$2,000.

A. Yes, sir.

Q. With that statement in mind, can you answer my question as to whether he knew at that time?

A. He knew there had been a good deal of talk about this crank-shaft, and probably it would not have to come out, and he spoke to me about the same thing.

Q. In this conversation? A. Yes, sir.

Q. So he knew that it was a question that was undetermined, whether the crank-shaft would or would not come out? A. Yes, sir.

Q. Do you remember the date of the acceptance of this bid?

A. It was somewhere near about the 17th or 18th of August. I do not remember exactly.

Q. Subsequently, after this conversation, in which you accepted the bid of the United Engineering Works, state whether or not the "Hilonian" was turned over to the United Engineering Works.

(Testimony of William Matson.)

A. She was turned over to them shortly after the acceptance of the bid.

Q. For what purpose was she turned over?

A. To fulfill that specification.

Q. To fulfill the accepted bid? A. Yes, sir.

[1449—1361]

Q. According to the specification?

A. That is right.

Q. Between the date of the acceptance of the bid of August 2d and the turning over of the "Hilonian" to the United Engineering Works in furtherance of that acceptance, do you remember having any talk with Mr. Gray or any other official of the United Engineering Works with reference to the work?

A. I don't remember having any.

Q. Between those periods of time do you remember having any talk with Mr. Putzar?

A. He came up to the office once.

Q. You need not state the conversation, Captain. I want to know if you remember that you did talk with him.

A. I did talk to him, yes, but I do not remember the date.

Q. Was a timekeeper placed on the job?

A. He was to be the timekeeper.

Q. Was he engaged for that purpose?

A. For that purpose.

Q. What was his duty?

A. Only to keep time on the repairs of that ship.

Q. Did he have any other authority given to him by you? A. No, sir.

(Testimony of William Matson.)

Q. Was anyone else connected with the Matson Navigation Company clothed with power to give any authority over than yourself?

A. No, sir.

Q. Captain, were you in this jurisdiction during the time the "Hilonian" was being repaired?

A. Part of the time.

Q. When did you leave the jurisdiction?

A. I think about the 10th of September; I do not remember exactly the date; somewhere in the neighborhood of that.

Q. About the 10th of September, 1909?

A. Yes, sir.

Q. Do you remember when you returned?

A. Somewhere around about the 27th.

Q. Of September? A. Yes, sir. [1450—1362]

Q. 1909? A. Yes, sir. She was gone then.

Q. That is, the work had been completed then?

A. Yes, sir.

Q. Do you remember subsequently whether you left this jurisdiction? A. Afterwards?

Q. Yes.

A. No, sir, I don't remember. I went back east but I cannot recall the date.

Q. But you did go back east after the 27th of September? A. Yes, sir.

Q. Do you remember when you returned from the east on that occasion?

A. I think I returned somewhere about the 10th of December.

Q. Some time in December?

(Testimony of William Matson.)

A. Yes, sir; somewhere around the 10th or the middle of December; I do not remember exactly the date.

Q. So that somewhere between the dates of September 10th and 27th you were absent in the east?

A. Yes, sir.

Q. And shortly after the 27th of September you left again for the east?

A. Yes, sir; I do not recall exactly the date. I would have to go back to the book and hunt it up.

Q. And returned from that second trip sometime in the fore part of December? A. Yes, sir.

Q. When Mr. Putzar was employed did he have any authority given him by you to make any change in the specification work which had been let to the United Engineering Works under their bid of August 2d? A. None.

Q. Did Mr. Putzar have any authority to make contracts for the Matson Navigation Company?

A. Not any.

Q. During the period of the repair on the "Hilonian"? A. Not any.

Q. During your absence from this jurisdiction who was it that had charge of the work being done on the "Hilonian" as representing you?

A. The chief engineer was there and Captain Saunders. [1451—1363—4] They were supposed to look out for the company's interest.

Q. Who was the chief engineer?

A. Klitgaard.

Q. Did Mr. Klitgaard take the "Hilonian" out

(Testimony of William Matson.)

following the completion of these repairs?

A. Mr. Putzar did.

Q. As chief engineer? A. Yes, sir.

Q. When was Mr. Putzar definitely employed as chief engineer of the "Hilonian"?

A. After the ship was fixed up, I think; he had already gone before I got back.

Q. Did you ever employ—

Mr. FRANK.—I move that that be stricken out as hearsay on the part of the witness. He does not know anything about it, he was not here at the time.

Mr. McCLANAHAN.—Q. Did you employ Mr. Putzar as chief engineer?

A. I had spoken to him and had promised him a job before I left.

Q. Did you promise him the job? A. Yes, sir.

Q. When was that?

A. Well, I could not recall the date; it was when the ship was being repaired, before I went east. Mr. Klitgaard had sent in his resignation; he was to leave.

Q. Do you know who it was that actually employed Mr. Putzar?

A. I think Captain Saunders gave him the job.

Q. Did you prior to that authorize Captain Saunders to do that? A. I think so.

Q. And he was employed while you were away?

A. Yes, sir.

Q. During the progress of the work on the "Hilonian" did Mr. Putzar make any report as timekeeper?

A. No, sir.

Q. Did he make any report afterwards after the

(Testimony of William Matson.)

completion of the work?

A. I think he did some month or two afterwards. I insisted on getting a report and I think he sent one in.

Q. Before Mr. Putzar reported to you as timekeeper had you ever [1452—1365] had knowledge of the work of keeping time which he had performed on the job? A. No, sir.

Q. Was he engaged to keep time on the ship or on the whole job?

Mr. FRANK.—I object to your leading the witness, Mr. McClanahan. You have been doing it straight along and I have not objected to it.

Mr. McCLANAHAN.—Mr. Frank, Captain Matson is a witness that cannot be led improperly and you know it.

Mr. FRANK.—That has nothing to do with it at all. You have to adhere to the rules of law with Mr. Matson as you would with anyone else. Mr. Matson is just as human as you and I, and in saying that I cast no reflection on him.

Mr. McCLANAHAN.—Read the question, Mr. Reporter. (The Reporter reads the question.) I further remark that the question is not leading.

A. Shall I answer it?

Q. Yes. A. He was, for the whole job?

Q. Do you know whether he kept time on the whole job or not?

Mr. FRANK.—I do not see the materiality of this examination at all. We are not responsible for Mr. Matson's timekeeper; whether he reported to him or

(Testimony of William Matson.)

he did not report to him, or how he reported to him, is a matter entirely between himself and his time-keeper. It can in no wise affect our rights in the premises.

Mr. McCLANAHAN.—You seem to think, Mr. Frank, we are bound absolutely by Mr. Putzar's actions. Our contention is we are not bound absolutely by his actions.

Mr. FRANK.—You certainly are, as far as we are concerned.

Mr. McCLANAHAN.—Q. Read the question, Mr. Reporter. [1453—1366]

(The Reporter reads the last question.)

A. Shall I answer?

Q. Yes.

A. I don't know whether he did or not.

Q. Do you know, Captain Matson, whether it was known to Mr. Gray or any other officer of the United Engineering Works that Mr. Putzar had been appointed by you as timekeeper on the job?

A. Mr. Gray knew it, surely.

Q. How long after the completion of the work was it, if at all, that you saw this time-book which is marked "Respondent Curtis Exhibit No. 4"?

A. It was some long time afterwards; I do not remember how many months.

Q. It was a matter of months, was it?

A. Yes, sir.

Q. Had you after the completion of the job made inquiry for this? A. Yes, sir.

Q. Who from? A. From Putzar.

(Testimony of William Matson.)

Q. From Mr. Putzar? A. Yes, sir.

Q. And were you or were you not able to get it from Mr. Putzar?

A. I did not for a long time afterwards.

Q. Captain Matson, had Mr. Putzar any authority to bind the Matson Navigation Company to a payment of ten hours work for labor performed on the ship "Hilonian" at this time when only 8½ hours were actually worked by the operator?

Mr. FRANK.—I object to that as asking the witness for a conclusion of law.

Mr. McCLANAHAN.—Q. Answer the question.

A. No, sir.

Q. Did you at the time of the repair work being done on the "Hilonian" have knowledge of any custom by which operators on similar work were paid for ten hours when they actually worked only eight and one-half? [1454—1367]

Mr. FRANK.—I object to that as immaterial, whether the Captain had knowledge of any custom of that nature.

A. No, sir, I had not.

Mr. McCLANAHAN.—Q. Did you at that time have knowledge of any custom by which a shop paid to an operator in doing repair work nine hours pay for eight and a half hours work?

Mr. FRANK.—Same objection.

A. I did not.

Mr. McCLANAHAN.—Q. Did any other officer of the Matson Navigation Company have such knowledge of such custom?

(Testimony of William Matson.)

Mr. FRANK.—How can he testify to what other officers of the Matson Navigation Company had knowledge of.

A. Not that I know of.

Mr. McCLANAHAN.—That straightens it out.

Mr. FRANK.—You ought not to put it in a position where it requires straightening out.

Mr. McCLANAHAN.—I do not know about that.

Mr. FRANK.—Then you are learning something.

Mr. McCLANAHAN.—I am learning something every day.

Mr. FRANK.—You need it.

Mr. McCLANAHAN.—I appreciate that, too, Mr. Frank; some people do not appreciate it.

Q. Captain, do you remember work that as matters developed was required on the tank top of the “Hilsonian”? A. Yes, sir.

Q. With reference to that work, state whether or not you received a bid for it from the United Engineering Works. A. I did.

Q. I hand you a paper dated August 31st, 1909, and ask you if you can identify that letter (handing). A. That is the letter.

Q. That is the bid for the tank-top work?

A. Yes, sir. [1455—1368]

Q. Was that bid accepted or rejected, Captain?

A. Rejected.

Q. Did you have a conversation with Mr. Gray at the time of its rejection? A. Yes, sir.

Q. What was it?

A. Mr. Gray said that he would guarantee to do it

(Testimony of William Matson.)

within that bid, and a timekeeper could keep time on it.

Q. Whose timekeeper?

A. The Matson Navigation Company's.

Q. Did Mr. Gray say anything else about keeping time? A. No, sir.

Q. And under those circumstances state whether or not you authorized the work to be done.

A. I did.

Q. Now, state again definitely, Captain, what were the conditions under which you authorized the work to be done.

Mr. FRANK.—You have got it in once. Now, do you want to double up on it?

A. You want me to repeat the same thing over again?

Mr. McCLANAHAN.—Q. Practically, yes. Make it a little clearer what were the conditions under which you authorized that work to be done.

A. He guaranteed it would be done within that limit of twelve hundred dollars, or whatever it is, I have forgotten now, and if it was any less we would get the credit for it.

Q. Under these circumstances you were to keep time on the job? A. Yes, sir.

Q. Do you know whether Mr. Gray did anything with reference to keeping time on the job?

A. No, sir, I do not.

Mr. FRANK.—I object to all that on the ground that it is calling for the conclusion of the witness, that he guaranteed to do this and he guaranteed to do

(Testimony of William Matson.)

that; we are entitled to the conversations.

Mr. McCLANAHAN.—We offer in evidence the letter dated San Francisco, California, August 31st, 1909, addressed to the Matson [1456—1369] Navigation Company, and signed by the United Engineering Works, per H. P. Gray, which has been identified by the witness, and ask that it be marked Respondent's Matson No. 1.

Mr. FRANK.—We object to it as incompetent, irrelevant and immaterial.

(The letter is marked "Respondent's Matson No. 1" and is as follows:)

[Respondent's Matson No. 1.]

"San Francisco, Cal. August 31, 1909.

Matson Navigation Co.,

Gentlemen: We propose to replat the top of after double bottom tank where bulged, on one side only, from shaft alley out to margin angle and from shaft alley bulkhead to next bulkhead directly forward of same, for the sum of one thousand two hundred fifty (\$1250.00) Dollars. This price includes the chemists charge and such stiffening as may be required, also angles supporting tank top plating, but does not include cleaning of tank or testing of same. We will guarantee to make tight all the new work but if any leakage in old work shows up on testing an extra price will be made upon all such old work as it may be deemed necessary to make tight. The above figure contemplates the renewal of the angle at the top

(Testimony of William Matson.)

of margin in way of new plating.

Respectfully submitted,

UNITED ENGINEERING WORKS.

Per H. P. GRAY."

Mr. McCLANAHAN.—Q. During the progress of the work on the "Hilonian" did you at any time make any agreement or contract with reference to additional work on the ship?

Mr. FRANK.—I object to that also as asking for a conclusion [1457—1370] of the witness.

A. I did.

Mr. McCLANAHAN.—Q. Was it in writing or verbal? A. No, sir, verbal.

Q. Who was the contract made with?

A. Mr. Gray.

Q. Where was it made?

A. Right in the pilot-house of the "Hilonian."

Q. On board the ship? A. Yes, sir.

Q. And where was the "Hilonian" at that time?

A. At the United Engineering Company's yard.

Q. Was this prior to your leaving here on September 10? A. Yes, sir.

Q. What was the contract, Captain?

A. The smokestack.

Q. The smokestack contract? A. Yes, sir.

Q. And what was the agreed price for the smokestack? A. \$900.

Q. That was a new smokestack? A. Yes, sir.

Mr. FRANK.—I object to that method of examining the witness, and I shall have to insist upon it. The witness can tell what the contract was without

(Testimony of William Matson.)

your testifying in the case.

Mr. McCLANAHAN.—Q. Who was present at the time that the smokestack contract was entered into?

A. Captain Saunders and I think Captain Johnston. I am not sure whether Mr. E. D. Tenny was on board or not. I am not sure. I will not swear to it. I had some gentlemen with me over there and I don't remember whether he was.

Q. Can you remember anybody else?

A. Klitgaard was there, too, I think.

Q. See if you can now state all of the conversation with reference to the smokestack contract.

A. He was to take the old one out and instal—
[1458—1371]

Mr. FRANK.—State what was said, not what he was to do.

Mr. McCLANAHAN.—Q. Captain, you are not required to give the exact words of the conversation unless you remember them. If you cannot remember the words, state the substance, as you started to do.

A. He was to take the old one out and replace it with a new one, and do all the work for the \$900.

Q. Was anything said at that time as to the time within which the work was to be done?

A. It was not to delay the ship.

Q. What was that understanding?

A. The understanding was that the ship was to be ready in, I think, so many working days, 26, I think—I do not remember exactly, twenty something.

(Testimony of William Matson.)

Q. Can you refresh your memory as to when the ship was to be finished by referring to "Christy Exhibit B" which you have identified?

Mr. FRANK.—That is not his memorandum. It is not a proper thing for him to refresh his memory from.

Mr. McCLANAHAN.—You have made that statement several times, intimating that a witness cannot refresh his memory except from a memorandum made by you and I take square issue with you on that proposition.

Mr. FRANK.—I never said he could refresh his memory from a memorandum made by me.

A. He was to have that ship ready in 25 working days and it was not to interfere with that.

Mr. McCLANAHAN.—Q. That is the smokestack was not to interfere with completing the job under the original condition of 25 days?

A. That is right.

Q. Was that agreed to by Mr. Gray?

A. Yes, sir; he accepted it verbally and said he would do it. [1459—1372]

Q. Did you ever at any time other than the work that you have just mentioned talk with Mr. Gray or any other officer of the United Engineering Works with reference to the time within which the original specification work was to be done?

A. I don't remember having had any conversation, except he was to have it finished in the specified time, which he agreed to.

(Testimony of William Matson.)

Cross-examination.

Mr. FRANK.—Q. Captain, the Matson Navigation Company's business is not your only business, is it?

Mr. McCLANAHAN.—I object to that as immaterial.

A. No, sir; I have other things.

Mr. FRANK.—Q. A great many, haven't you?

A. A few. I do not know how many.

Q. Well, you are a very busy man, in very many different lines, are you not?

A. Yes, sir, I think so.

Q. You have the Matson Navigation Company; you have some oil companies, have you not?

A. Yes, sir.

Q. President of the Chamber of Commerce, which takes up a great deal of your time?

A. I am out now.

Q. Well, you were during this time?

A. No, sir, I was not.

Q. Not at that time? A. No, sir.

Q. Well, you had a great many other duties in a great many other lines, did you not?

A. Perhaps some.

Q. And none of this work you could attend to personally? You had to have people under you on whom you relied, did you not?

A. No, sir. I differ with you on that. I generally looked after some of it myself if I was in town.

Q. But you had people whose business it was to look out for it for you?

(Testimony of William Matson.)

A. Some of it. [1460—1373]

Q. Now, Captain Saunders was your port captain?

A. Yes, sir.

Q. And as port captain he had the care and control of all your vessels in port, overseeing the repairs and matters of that sort, did he not?

A. He never used to have anything to do with the engine part of the work.

Q. He had the general supervision of the repairs, did he not, and of the hiring of the men and things of that sort? A. No, sir.

Q. What did he have to do?

A. He was general superintendent of the loading and discharge of the ships and reported to me when anything was wrong with the ships, and some little details of that kind, it was his duty.

Q. Did he not have the superintendence of the repair of the ships? A. No, sir.

Q. Had he not always exercised authority in the repair of your vessels from the time you began your work with the United Engineering Works?

A. No, sir.

Q. When did he begin?

A. He never had the authority to superintend the job of the engineering department.

Q. Not to superintend the job of the engineering department? A. No, sir.

Q. But other jobs he did? A. Yes, sir.

Q. So you draw the line on the engineering department, is that it? A. Yes, sir.

Q. Who had the superintending of the engineer-

(Testimony of William Matson.)

ing department?

A. There was not any regular superintendent until I got Mr. [1461—1374] Diericx. Now, he is the general superintendent. In the case of the “Hilsonian” the chief engineer was there to see that the work was carried out according to the specifications.

Q. The chief engineer ordered the work. He drew the original specifications, did he not?

A. Yes, sir.

Q. And he was there to see that the vessel was properly repaired, was he not?

A. Yes, sir, to see that the specifications were carried out.

Q. Now, you know, as a matter of fact, Captain, that those specifications turned out to be inadequate, did they not? A. Not that I know of.

Q. You did not know about that? A. No, sir.

Q. You did not know that the engines of the vessel were in a very bad condition, very much worse than you anticipated from the specifications?

A. No, sir.

Q. You did not know it? A. No, sir.

Q. You did not know when you took the engines apart a great many things had to be done that were not originally contemplated? A. No, sir.

Q. You did not know that Mr. Klitgaard ordered those things to be done in conjunction with Captain Saunders and also with Mr. Putzar? A. I did not.

Q. You did not know that? A. No, sir.
[1462—1375]

(Testimony of William Matson.)

Q. You did know it, however, before the repairs were completed, did you not?

A. I was east when she was completed, and I was dumbfounded when I found out what had been going on.

Q. You were dumbfounded? A. Yes, sir.

Q. You are not an engineer yourself, are you, Captain? A. No, but I do know a little something.

Q. Well, you know a little something about everything, don't you, Captain?

A. Well, not much, but a little.

Q. What I mean by that is you have had no experience as an engineer in anything of that kind?

A. No, except what I picked up.

Q. I think your experience is mostly that of a master of sailing vessels?

A. Well, I have had some other experience, too.

Q. But when you went to sea, you went to sea in sailing vessels, did you not? A. Yes, sir.

Q. You never went to sea in steamships, except as a passenger, did you?

A. Let me tell you one thing; I made the first engine that was ever made around San Francisco Bay here, an engine for hoisting.

Q. When you say you made it, you mean you draughted it, do you?

A. Yes, I draughted it, so I did know something about it.

Q. That ended your engineering experience, did it not, Captain?

A. No, not altogether. I have been thinking about

(Testimony of William Matson.)

it for some time.

Q. How do you employ Captain Saunders—have you a written contract with him?

Mr. McCLANAHAN.—I object to that as immaterial.

A. No.

Mr. FRANK.—Q. You have not? A. No.

Q. How long has he been in your employ? [1463—1376]

A. Oh, I don't know; I think 5 or 6 years or 4 or 5 years.

Q. He O.K.'s all bills for repairs, does he not, before they are paid? A. No.

Q. He does not?

A. No. Now, Mr. Diericx O.K.'s them.

Q. I mean before Mr. Diericx?

A. Before Mr. Diericx, yes, he did O.K. some of them.

Q. Are you the only one in the Matson Navigation Company that has anything to do with the active business operations of that company?

A. I believe so.

Q. Have you not a board of directors?

A. Oh, yes; we have a board of directors; I did not know what you meant.

Q. They meet regularly, do they not?

A. Once a month.

Q. And these matters are brought up before them?

A. Sometimes they are, and sometimes not.

Q. And you say you have been doing this work with the United Engineering Works for 8 or 10 years?

(Testimony of William Matson.)

A. Well, a good many years; I could not say exactly how many.

Q. Before Captain Sanders came there, who attended to the details of supervising the repairs?

A. Myself.

Q. You did it yourself before that?

A. Yes, and Captain Rock was there for quite a while, too.

Q. Now, I understand you that these bids for these repairs were rejected. A. Yes, the first ones.

Q. Were they not all rejected? You never made a written acceptance of any of them, did you?

A. Not that I remember; no.

Q. And the only acceptance which you contend you made in this cause was a verbal one to Mr. Gray, telling him, as you put it, that you were not satisfied with the price in that bid; is that right?

A. In the last bid I accepted from him. [1464—1377]

Q. You say you accepted—let us see what happened between you. You told him you were not satisfied with the price—is not that it?

A. The first one I did that.

Q. Did you not do it with the second one?

A. Yes, I told him that I thought the price was still high and he suggested that I put a timekeeper on, he wanted the job so bad, in order to get that ship over to the yard.

Q. Let us not deal so much with your conclusions, Captain. Give us the conversation that passed between you. A. I am just telling you.

(Testimony of William Matson.)

Q. No, you are not; you are giving your conclusions. What did Mr. Gray say, and what did you say on that occasion, and what was the occasion?

Mr. McCLANAHAN.—Just one moment, Captain. Captain, let me instruct you that you are not required, if you do not remember the exact words, to give the exact words.

Mr. FRANK.—I object to that instruction at this time until the captain has found himself unable to do that.

A. Well, I will do it as near as I can.

Mr. FRANK.—Q. Now, Captain, let you and I get along together. We know each other well enough to be able to talk to each other. In the first place, how long was it after that bid came in that you saw Mr. Gray?

A. I could not answer that question. I think the bid came in somewhere about the 2d, and it was not until about the 17th or 18th.

Q. Between the 2d and the 17th or 18th, how many times did you see Mr. Gray?

A. I don't remember. I could not tell you that because he used to be in the office pretty near every other day, every now and then.

Q. Were these conversations that you speak of held in the [1465—1378] office? A. Yes, sir.

Q. What did you say to him upon this subject and what did he say to you upon this subject?

A. He said he would take that job and guarantee the Matson Navigation Company that he would do the job within those figures, \$11,749.

(Testimony of William Matson.)

Q. And what did you say?

A. I told him I would accept it.

Q. Is that all the conversation? Why should he guarantee that he would do it within those figures when his written bid was those figures?

A. I told him I still felt that he was high, and I would put a timekeeper on over there and see how that would come out, and there was a crank-shaft—

Q. (Intg.) Just one moment. You say you put a timekeeper on there; why did you put a timekeeper on? What was the conversation between you and him respecting that?

A. You do not seem to give me a chance, or you did not catch my answer. I say I told him I would put that timekeeper on and to see that we would get a reduction on that crank-shaft which we expected would come out on that day.

Q. Is that the only reduction you expected in that bid? A. That is all, \$2,000—about.

Q. Is it not a fact, Captain, that you told him the bid was too high and you would not pay that amount, and that nothing was said then about a crank-shaft, and you said you would put a timekeeper on there and see what it would cost and if it cost less than the amount of the bid, that—

A. (Intg.) What do you mean?

Q. Wait until I finish my question.

A. No, nothing of the kind.

Q. Just wait a moment, Captain. Just keep cool, Captain. [1466—1379]

(Testimony of William Matson.)

A. Well, don't try to get something on me that is not so.

Q. You and I will come together on that yet; you will see. (Addressing the Reporter.) Just read my question as far as it has gone, Mr. Reporter. (Question read by the Reporter.) And that you would pay him according to the timekeeper's time?

A. Not on your life.

Q. Just one moment, Captain.

A. Now, don't try that.

Q. Just one moment, Captain. Do you remember me calling upon you about this bill before the suit was brought in this matter?

A. You called on me; yes.

Q. You remember the conversation you and I had at that time? A. No, I do not.

Q. You don't remember the conversation?

A. No, sir, I do not because I was very much surprised that you took that suit, and I am still surprised.

Q. In other words, you offered me a retainer in the matter and I told you I was engaged?

A. Yes. You are my man. I have always felt since that if you had known enough about it you never would have taken the case.

Q. You appreciate, however, that there are two sides to every case? A. Yes, sir.

Q. And that different people have different views upon a subject matter, the same as you have?

A. Yes, sir.

Q. Now, you don't remember the conversation be-

(Testimony of William Matson.)

tween us at that time? A. No.

Q. Now, see if I can refresh your recollection about it; you remember I asked you what was the matter with this thing and you told me at that time that you would not accept that amount in that bid and you would put a timekeeper on, and it was the [1467—1380] understanding with Gray that you should get a reduction on it if the time and the material did not amount to that? A. No.

Q. You don't recollect that?

A. No, sir, because I never said that.

Q. Well, our recollections differ, Captain. Do you remember ever saying anything to me about a crank-shaft?

A. No, I don't remember, Mr. Frank. You know those things I forget. I don't carry them in my head all the time.

Q. Now, Captain, do you remember ever saying anything about a crank-shaft before this examination, and that the reduction of \$2,000 for the crank-shaft did not have to come—

A. (Intg.) You mean—

Q. I mean to the United Engineering Works or anybody representing them? A. No.

Q. This is the first time that that subject has come out? A. From me, it is.

Q. When did you first take this matter up with your counsel to prepare for this examination to-day, Captain?

A. I think he telephoned to me Saturday and told me I was to be on here for Monday morning.

(Testimony of William Matson.)

Q. Did he go over this matter with you on Saturday? A. Only part of it.

Q. Did he suggest anything to you about a crank-shaft at that time?

A. No. In fact, I don't care to have anybody suggest these things to me, Mr. Frank. I try to tell them just as I remember them, and nothing else.

Q. I give you credit for that, Captain, all right enough, but I want to find out what the facts are because this crank-shaft business is very new to me. Who first suggested the possibility of the crank-shaft not having to come out? [1468—1381]

A. I think the chief engineer, if I am not mistaken.

Q. You say if you are not mistaken; have you any distinct recollection of that?

A. I think he told me he did not think it would need to come out, and then Mr. Christy went out when the ship came in and examined her, and he also reported that he thought the crank-shaft was all right.

Q. To whom did he report that?

A. He told that to me in the office.

Q. When did Mr. Klitgaard report to you that he did not think the crank-shaft would have to come out?

A. I do not recall exactly that time, Mr. Frank.

Q. Then, by the crank-shaft not coming out, you wish to give us to understand that it was the idea of Mr. Christy and of Mr. Klitgaard that the crank-shaft was all right; is that it? A. Yes.

Q. And required no work to be done on it?

A. It did not require to come out. I don't remem-

(Testimony of William Matson.)

ber about any work on it.

Q. What do you mean by coming out?

A. Lifted out of place and taken to the shop.

Q. You said that Mr. Christy said the crank-shaft was all right?

A. That it looked to him that it was all right; that is just what he said.

Q. And did Mr. Klitgaard say it looked to him as if it was all right? A. He thought it was all right.

Q. And you understood both of them to mean that the crank-shaft was all right and required no work done on it; is that right?

A. It did not require to come out; I don't say about no work on it.

Q. What do you mean by "coming out"? [1469—1382]

A. Well, if the crank-shaft has to come out it has to be taken out of the ship and lifted on deck and from there into the shop. That is coming out.

Q. Well, by that you mean it was not required to go in to the shop; is that it? A. Yes, sir.

Q. Well, now, Mr. Matson, do you not know, as a matter of fact, that it was not determined that that crank-shaft should not go into the shop until after the engine was stripped and they started to take the crank-shaft out of the ship?

A. That may be all right.

Q. And that was the first time it ever occurred to anybody not to take it to the shop?

A. No, you are all wrong there.

Q. Why did they not take the crank-shaft out of

(Testimony of William Matson.)

the ship, Captain, do you know?

A. No, I do not.

Q. You don't know?

A. There was nothing the matter with it, otherwise they would have taken it out.

Q. Your idea, then, at the time you say you had this conversation with Mr. Gray was that it was possible there was nothing the matter with the crank-shaft and that no work would have to be done upon it; is that right?

A. When you say that no work—there might be a little something done in the ship which I know nothing about, but it did not have to come out of the ship.

Q. When you say “a little something done in the ship,” you mean work that was of little consequence?

A. That is right.

Q. Was there anything else said between you and Mr. Gray at the time of this conversation, respecting the conversation about the United Engineering Works doing these repairs after this bid was in and while it was under consideration?

A. Nothing that I remember. [1470—1383]

Q. And you still feel sure that you did not tell Mr. Gray or anyone connected with the United Engineering Works that you considered the bid too high and that therefore you would put on a time-keeper, and if it turned out that the work did not cost as much as the amount of the bid you were to have the work done at the lesser price?

A. No, I never said that.

Q. You never said that? A. No, sir.

(Testimony of William Matson.)

Q. Then am I to understand your present contention to be that you simply put on a timekeeper to ascertain what the difference would be in the cost in case the crank-shaft did not have to come out for repairs in the manner that you have testified to?

A. I think so.

Q. That is the only thing you put a timekeeper on for? A. That is the only thing he was there for.

Q. The only thing, that is, to keep time on the crank-shaft job?

A. To keep tab on everything around there with regard to time.

Q. Why should he keep time on anything except the crank-shaft job if that was the only thing that would make any difference in the contract price?

A. Well, there are a good many reasons for that. I think there is a good deal of work connected with that—you know something about an engine, I suppose you know all about it, and you know that you can get at the crank-shaft, but it takes a lot of tearing down, and different things coming along, and I thought it would be a good thing to have a timekeeper on there anyway.

Q. What is the good of a timekeeper if you have a specified figure for which the work is to be done?

A. I wanted to know what it was going to cost, anyway. I was satisfied in my mind that the bids were too high, but at the same time I accepted the bid and gave them the job, but I [1471—1384] thought I would keep a little tab on them anyway.

Q. So it was only a matter of curiosity on your

(Testimony of William Matson.)

part that you put a timekeeper on there?

A. A matter of knowledge, not of curiosity. I would like to know.

Q. When I say "curiosity" I mean the timekeeper was not there for any practical purpose connected with the man you were to put on that particular job?

A. On that particular specification, only the crank-shaft.

Q. With reference to Mr. Putzar, you say you inquired of Mr. Samuels concerning Mr. Putzar, did you not?

A. I think I did. I have not asked Samuels whether I did, or not, and I have forgotten all about it.

Q. Before you took him you satisfied yourself of his ability and integrity, did you not?

A. Mr. Gray said he was all right. He said that there were only about three men in the town he would allow to be timekeepers in his place, and amongst those three was Mr. Putzar.

Q. Mr. Gray said he would not allow anybody except those three men to be timekeepers in his place?

A. Yes, that is what he said.

Q. Are you positive about that?

A. Yes, I am positive. He said he would not work with any others.

Q. Did you find out from the Oceanic people what Mr. Putzar's standing and position was?

A. I think I spoke to Samuels about it and he said he was all right.

Q. He was the superintending engineer of the

(Testimony of William Matson.)

Oceanic Steamship Company, was he not?

A. I don't know that.

Q. Did he not tell you so?

A. I do not remember whether he did or not.

Q. Well, did you not know, as a matter of fact, Captain, that he was such? Have you not that information of conditions on the [1472—1385] waterfront sufficient to say that you know that?

A. I would not want to say because I don't think I ever asked that.

Q. Don't you know it now?

A. No, I don't know it now. I could put my hand on the Bible and say I don't know it now.

Q. You don't remember what Mr. Samuels told you about him?

A. He told me that he thought he was all right.

Q. Have you made any inquiry since that time concerning Mr. Putzar's standing?

A. No, I think not.

Q. You would not want to say now, Captain Matson, that Mr. Putzar was not a man of the highest integrity in his business, and of first-class skill, would you?

A. I don't know that I would; no. I would not say anything about it. If you asked me what kind of a man he was I would refuse to answer.

Q. You would not want to undertake to say that he was not a man who has the reputation amongst all people who have dealt with him as being a man of the very highest integrity?

A. I refuse to answer that question.

(Testimony of William Matson.)

Q. You refuse to answer the question? A. Yes.

Q. Well, you have every confidence in Mr. Samuels, in his integrity, have you not?

A. Yes. Don't ask me such things as that.

Q. What? A. Oh, that is all right.

Q. And you think more than that of him, do you not—you think Mr. Samuels is a man of the highest integrity and would not tell you that a man was all right— A. (Intg.) If he did not believe it.

Q. Yes, if he did not believe it. A. Yes.

Q. And Mr. Samuels has been managing the Oceanic ever since its organization, has he not? [1473—1386]

A. Yes, that is right.

Q. And you have been in very close touch with him all that time?

A. Yes, all the time; he is a personal friend of mine.

Q. During the time you were here, Mr. Matson, after the "Hilonian" went over to the United Engineering Works for repairs, and up to September 10, when you say you went away, did you go over to the United Engineering Works to see how the repairs were progressing?

A. Yes, I went over there once or twice, I believe.

Q. With whom did you go?

A. I do not remember now.

Q. Who did you meet over there on those occasions representing the United Engineering Works?

A. I don't remember that I met any of them.

Q. You don't remember that you met any of them?

(Testimony of William Matson.)

A. No. I just merely went aboard the ship. I did talk to the chief engineer once or twice.

Q. Did you speak to Mr. Putzar on any of those occasions? A. I never saw him when I was there.

Q. Did you inquire if he was on the job?

A. I think I did and somebody said he was in the shop.

Q. You never asked him during that time for any reports, did you? A. No.

Q. At the time that you met Mr. Klitgaard, can you give us any idea of the date?

A. No, I could not.

Q. Can you approximate it at all? A. No.

Q. Was it shortly before you went away?

A. Yes, I suppose a week or so. I do not remember exactly now what date it was.

Q. At the time you went over there, were you contemplating leaving?

A. Well, yes, I think I was—the last time. I was contemplating leaving anyway before the job [1474—1387] was finished because I knew I had to go.

Q. You knew you had to go? A. Yes, sir.

Q. At the time you went over with Mr. Klitgaard, did you go down into the ship? A. Yes, I did.

Q. Did Mr. Klitgaard tell you at that time what they were doing?

A. I think that he spoke to me about what work was going on in general—that is all.

Q. Well, he told you what they were doing, did he not? A. I do not remember.

(Testimony of William Matson.)

Q. Did he make any inquiry about what they were doing?

A. I suppose I did. We went down in the engine-room and looked and he told me the work was going on. I do not remember anything else. I did not put down any notes.

Q. Did he tell you at that time that when they opened her up they found they had to depart from the specifications? A. No, he did not.

Q. He did not tell you that? A. No.

Q. Did he ever tell you that?

A. No. I think one time he told me something about a patch somewhere on the condenser, which he said was going to be cheaper, or that anyway that it was not going to cost any more money.

Q. Is that all that he told you about the changes?

A. I don't remember now, Mr. Frank. That is a long time ago. I never expected to come in here before you on this.

Q. Well, Captain, I am sorry you are here.

A. You bet! So am I.

Q. Did you ever talk to Captain Saunders about the matter?

A. I think I did, also about same patch on the condenser.

Q. That is the only thing you spoke to Captain Saunders about changes from the specifications?

A. I think that is about what [1475—1388] he reported to me, that it was changed and was going to be cheaper.

Q. And he did not report to you anything else?

(Testimony of William Matson.)

A. No.

Q. That they were making changes all along the line? A. No.

Q. Did you ever ask him?

A. No, I don't think I did.

Q. You say that Mr. Klitgaard had handed in his resignation?

A. He told me he was going to leave.

Q. When was it he told you he was going to leave?

A. He told me that, I think, the trip before the ship laid up.

Q. The trip before the ship laid up? A. Yes.

Q. At that time was it agreed as to the time when he was going to leave?

A. No—oh, yes, it was, he said when the ship was finished, the repairs, he was going to quit.

Q. That he was going to quit? A. Yes.

Q. When was it that you engaged Mr. Putzar to take the ship out after the repairs were finished?

A. Captain Saunders had hired him when I was away east.

Q. Captain Saunders had hired him? A. Yes.

Q. And that was while you were away in the east?

A. The ship had left the yard while I was east.

Q. I understood you were east in September. On September 10th you went east? A. Yes, sir.

Q. And then he was hired by Captain Saunders between September 10th and September 27th; is that it? A. Yes, sir.

Q. Just at what period he was hired though you do not know?

(Testimony of William Matson.)

A. No. I had a talk with Mr. Putzar about it once, about at the time he went over to keep time, that if Klitgaard did leave that he was to have the ship. I do not remember exactly the date.

Q. As a matter of fact, then, before Mr. Putzar went on as [1476—1389] timekeeper you had agreed with him that he was to have the ship as chief engineer on the completion of the repairs; is that right? A. I think so.

Q. Before you went east, did Mr. Putzar say anything to you about the nature of the repairs being done? A. No.

Q. When you first met Mr. Putzar concerning this matter, what did you say to him?

A. I do not remember now.

Q. You do not remember?

A. No. I probably told him I wanted a timekeeper and wanted him to take the job. I guess that was the conversation. And I also told him that if Klitgaard, the chief engineer, would leave that he would get the ship.

Q. And you think that was the whole of the conversation? A. I think so, yes, sir.

Q. You told him he was to go over there and act as timekeeper and that if Chief Engineer Klitgaard left he was to get the ship?

A. Yes, that is all.

Q. Is that all?

A. Yes, sir. He was never in the office more than once or twice.

(Testimony of William Matson.)

Q. And that was all the conversation you had with him?

A. That is all as far as I can remember.

Q. Now, I understand you were absent from here after September 27th; do you remember what date you went away again?

A. No. I would have to look it up in the books, Mr. Frank.

Q. Well, do you remember whether it was very shortly after September 27th?

A. I think the ship made a trip between times.

Q. You think the ship made a trip between times?

A. Yes, I think so. I can give you the date when I left again for the east; I can go back to the office and look it up.

Q. I would like to have that date?

A. I can telephone now [1477—1390] to the office and find out that date.

Mr. McCLANAHAN.—After investigating the records of the office the witness ascertains that he left here for the east on November 4th and returned on December 9th or 10th.

Mr. FRANK.—Q. After September 27th, when you returned, do you remember when you first made inquiry for reports of the timekeeper on the “Hilonian”?

A. I do not remember the exact date; no. I think I notified Saunders to notify the United Engineering Works and also Putzar to bring in a report. They had not brought it in when I got back.

Q. You notified Saunders? A. Yes.

(Testimony of William Matson.)

Q. And what did you say about the United Engineering Works? A. To bring the bill in.

Q. To bring their bill in? A. Yes.

Q. I am speaking of reports of the timekeeper.

A. The timekeeper too.

Q. You notified Saunders?

A. Yes, to tell him, and I think he told me that he would try to make it up on the trip going down to Honolulu.

Q. What report was it you asked Saunders to get from the timekeeper? A. Just his time.

Q. Just his time?

A. The time that he kept tab on over there.

Q. Did you make any inquiry in your own office for it, among your own files?

A. I found they had not got it.

Q. I am asking you if you made such inquiry.

A. I think I did.

Q. And you were told they had not got it?

A. Yes.

Q. Who did you ask for it in your office? [1478—1391]

A. I suppose some of the bookkeepers; I cannot tell you offhand.

Q. So far as you know, then, it might have been in your office all the time and been mislaid?

A. No. So far as I know they were not there.

Q. You do not know whether it was there or not?

A. Yes, I know they were not there. I say they were not there.

Q. Personally you did not make any investigation,

(Testimony of William Matson.)

did you? A. Yes, I did.

Q. What investigation did you make?

A. Even when I was in New York I telegraphed them to have the bills brought in, because they telegraphed to me for money, and I said, "You have them, bring the bills in and check them up and pay them according to contract."

Q. That is not the subject I am talking about, Mr. Matson. I am asking you now about this book here, "Respondent Curtis Exhibit No. 4," containing the time-sheets of Putzar, which were in your possession.

A. They were not in my possession at that time.

Q. I am asking you now what inquiry you made for these time-sheets.

A. I asked Captain Saunders if they were sent in there and he said he had not got them.

Q. That is all you know about that?

A. I knew they were not there.

Q. You made no other inquiry?

A. I made lots of them.

Q. What is it, Captain?

A. I asked them if the papers and books and time had come into the office and they said no. That man Curtis never kept an account in his life straight.

Q. Now, keep cool, Captain.

A. Well, don't try to [1479—1392] come any funny business because I will not stand for it. I refuse to answer you on that question.

Q. Now, keep cool, Captain. I am not coming any funny business at all. I am questioning you as I have a right to do, and politely too, Captain, and I

(Testimony of William Matson.)

expect you to give me a polite reply in the same way. Now, outside of the inquiries that you have just testified to, you made no further inquiry about the book, did you?

A. I made inquiries whether they were in the office.

Mr. McCLANAHAN.—I object to the statement of counsel as the question applies to the book. The captain has not testified that he made inquiry about a book. There is nothing to show that he had any knowledge of a book.

Mr. FRANK.—Well, he has knowledge now of a book. He sees it lying before him and he knows what the book contains.

Q. Don't you Captain?

A. I don't know; I never looked at it.

Q. You never looked at it? A. No.

Q. You know now that those are the time-sheets of Putzar that were in your office and that have been produced by your counsel?

A. I suppose those are the time-sheets. I have not looked at them. I don't know anything about them. The only thing I have looked at is bills, and I found they were not correct.

Q. You never looked at these time-sheets?

A. No.

Q. Why were you inquiring for them, Captain, if it was not your purpose to look at them?

Mr. McCLANAHAN.—I object to the question upon the ground that the captain has not said he was inquiring for the time-sheets referred to. His testimony applies to Putzar's [1480—1393] report

(Testimony of William Matson.)

on the time kept.

Mr. FRANK.—Q. Now, let us have the answer, Captain.

A. I only asked for the report of Mr. Putzar so that I could see how it compared with the bills.

Q. Then am I to understand, Captain, that you were not looking at all for Putzar's time-sheets?

A. I was looking for his report.

Q. Do you make a distinction between his time-sheets and his report?

A. I don't know anything about this book part of it. I have not gone into that part.

Q. You don't know anything about the time-sheets and you were not looking for the time-sheets?

A. I wanted his report so I could compare it with the bills.

Q. What kind of a report, what kind of a detail in that report were you expecting?

A. I expected it to be like any other time-keepers keeping a book.

Q. What was the nature of the report?

A. Mr. Frank, a timekeeper does not have to make a book up two months after the work is all over. If he keeps his time he will have it in the book and he can hand that in right away after the work is finished.

Q. Then, after all, it was the book you were looking for; is that right? A. His report.

Q. It has been suggested by your counsel that you are talking about something else as a report. I am trying to find out from you what that something else

(Testimony of William Matson.)

was. Was that the report as contained in his time-sheets in this book, or was it a separate and independent report of some other kind that you were looking for?

A. I was looking for his report. I don't know what is in that book, I have not gone through it.
[1481—1394]

Q. You have not gone through it? A. No.

Q. Then it is not this book which you say was not in your office. When you speak about his report not being in your office, you do not wish us to understand that this book was not in your office all the time? Is that right? I want to find out what you are talking about, Captain.

A. Well, you try to find just what I am talking about. That book was not in the office for two months after the job was finished. You just said that I was trying to hire you as the attorney; I did not know that I should hire anybody until I got the report.

Q. Well, if that is so, Captain, then we are agreed upon it that when you speak of a report you are speaking of this book, and not as your counsel suggested, of some other book; is that right?

Mr. McCLANAHAN.—I will have to correct the suggestion of counsel. That was not my suggestion. I simply objected to counsel tying the witness down to an inquiry for that book. It may be that that is the report of Putzar but the witness did not say he was looking for that book.

Mr. FRANK.—Very well. We are trying to find

(Testimony of William Matson.)

out now definitely so that there will be no misunderstanding or dispute about it what it was Captain Matson was looking for.

A. Not that book; I know nothing about that book. I was looking for his daily book report on the job that he was working on.

Q. His daily book? A. Yes.

Q. You mean—

A. (Intg.) I don't mean anything but the one you carry in your pocket all day and put down the names, which anyone would do in keeping a tally. Did you ever keep a tally?

Q. What you were looking for then was not his report as embodied [1482—1395] in the time-sheets signed by himself, but you were looking for another and different book which you thought he kept?

A. I was looking for his daily report. I did not know what is put in the book here.

Q. You have never examined the book?

A. I have not gone into that.

Q. That is what I want to get at, Captain; then it was not this book you were referring to when you said— A. (Intg.) Now, just a minute.

Q. Let me finish my question.

A. Just a minute. I have not looked at that book since I came in. How do I know whether it is Putzar's or somebody else's.

Q. You have been examined upon it by your counsel and you have testified about it. Now, look at it and answer me if it is that book.

(Testimony of William Matson.)

A. Who made the book up?

Q. Look at it and see. That has come from your possession. Your counsel has produced it here.

A. That is the book that was brought in the office.

Q. That is the book you were looking for?

A. That is not the report I was looking for.

Q. Then when you say there was no report from him there, you do not mean this book?

A. I mean that book did not come in for two months afterwards.

Q. That statement you make upon what you have already stated as being what was told you by Captain Saunders, or somebody else; is that it?

A. I don't know what you mean.

Q. You have said that you inquired for Putzar's report, have you not? A. Yes.

Q. And you say that this book is his report?
[1483—1396]

A. That is the book, I guess, that was sent in the office a long time after, two or three months after the job was finished.

Q. How do you know that that book did not come in for two months afterwards? That is what I am trying to get at.

A. Well, I told you before I tried to find out if any report had come in, and there was none, and Captain Saunders told me that he said he would make it out on this trip down to Honolulu and back.

Q. Now, that is the extent of your information about that book coming in, is it not, Captain?

A. I refuse to answer.

(Testimony of William Matson.)

Q. Well, Captain, that is not reasonable, to refuse to answer. If it is the extent of your information I am entitled to know it; if it is not tell us what other information you may have. Now, I am not trying to lead you into saying something you do not want to say.

A. I am not afraid of saying anything, Frank, but I have been answering that three or four times.

Q. Well, it is my misfortune that I do not understand you and I want to get that straight.

A. Well, I am sorry. I refuse to answer and you can take me before the Court if you like.

Q. You refuse to answer as to whether or not that book is the report you are testifying to as Saunders having reported not having come in, or some other book; is that it?

Mr. McCLANAHAN.—I submit that that is not what he refuses to answer. The witness has refused to answer any more questions as to his knowledge of when that book came in, other than he has already testified to. [1484—1397]

Mr. FRANK.—Q. Is that it? A. That is right.

Q. On what do you base your statement that that book did not come in until two months afterwards?

A. I think I have already told you that the book was not in the office, the report was not in the office. I have told you I asked every clerk there and it was not there.

Q. That is what I want to know; you asked the clerks about it? A. Yes.

Q. And they told you it was not there?

(Testimony of William Matson.)

A. Yes. If my men in the office tell me that, then I say that is so. I am not keeping the books.

Q. Now, Captain, you did get a written report from Putzar, did you not, other than this book?

A. I believe I did; yes.

Q. Where is it?

A. I don't know. I got a letter of some kind. Have you not got it here, Mr. McClanahan?

Mr. FRANK.—What are you looking at me for?

Mr. McCLANAHAN.—I am waiting for you to talk.

Mr. FRANK.—Well, I have asked him where it is and he refers to you.

Mr. McCLANAHAN.—He said he does not know.

Mr. FRANK.—Q. What became of it when you last saw it?

A. I do not know where it is.

Mr. McCLANAHAN.—Do you wish it produced, Mr. Frank?

Mr. FRANK.—I am asking the witness about it. I am dealing with the witness.

A. (Continuing.) I don't know where it is, unless it is here in the papers, which I expect it is.

Q. Is that other written report the one you referred to as Putzar having said he would make up?

A. I don't know. [1485—1398]

Q. But I am asking you what you referred to. I am not asking you what the report was. I am asking you if that other written report is the one you referred to as the one Putzar said he would make up.

A. I don't know anything about it.

(Testimony of William Matson.)

Q. You don't know? A. No.

Q. That report was more than a letter, was it not?

A. I believe so.

Q. Was it not a detail of the work that was done, and his report on it?

A. I don't know anything about it.

Q. You don't know? A. No.

Q. You saw it, did you not, Mr. Matson?

A. I don't remember—yes, I have seen it. I have seen it once.

(A recess was here taken until 3 P. M.) [1486—1399]

AFTERNOON SESSION.

WILLIAM MATSON, cross-examination resumed:

Mr. FRANK.—Q. Now, coming back again, Captain, to this report of Mr. Putzar, you say that was a couple of months after the job was finished?

A. Somewhere in the neighborhood of that.

Q. When you got this report did you examine the bill with reference to it?

A. I think I looked at the bill, yes.

Q. Did you have any report from any other person connected with the job? A. No.

Q. Did you have a report from Klitgaard?

A. No.

Q. Are you sure about that?

A. I am sure about it.

Q. Did you never get a report from Klitgaard?

A. I don't know that I ever saw one. I know at that time he certainly never did.

(Testimony of William Matson.)

Q. Did you make any inquiry in your office to see if you had a report from Klitgaard?

A. I think I did. There was no report there. I did not expect any from him.

Q. Well, I can appreciate that, Captain, but at the same time there may have been a report there?

A. I think not.

Q. And that you overlooked it?

A. No, I don't overlook those things.

Q. Would not, as a rule, the engineer in charge make a report? A. He did.

Q. Did you confer with Klitgaard about the job at all?

A. I think the first time I seen Klitgaard after the time he left,—oh, I certainly did not see him for 3 or 4 months afterwards, and I don't think I spoke to him then. [1487—1400]

Q. Am I to understand you never conferred with Klitgaard about the job at all?

A. No, not that I can remember.

Q. Do you know if anybody conferred with him in your behalf? A. Not that I know of.

Q. You did not authorize anyone to confer with him on the subject? A. No.

Q. You were handling this entirely yourself at that time, were you not? A. At that time, yes.

Q. When did you call someone else in with respect to this bill?

A. I do not remember calling anybody in until I hired Mr. Diericx and then I had Diericx go over them.

(Testimony of William Matson.)

Q. When was that?

A. I cannot recall exactly the time.

Q. Give it to us approximately.

A. Then I would have to get back to the books and find when he came to work.

Q. You have not any idea of the time that he came to work? A. No, I have not.

Q. Probably Mr. Diericx could refresh your recollection upon it, if there is no objection.

Mr. McCLANAHAN.—We have no objection. I think it was the 1st of February.

Mr. DIERICX.—The 1st of February, 1910.

Mr. FRANK.—Q. Was that the first time, then, that you made an examination as to the details of this bill?

A. No, I don't think that was the first time. I looked over the bill before. After I asked to retain you as attorney I spoke to Mr. Brobeck and I think he came down and saw it. I do not exactly recall the date.

Q. Preceding that, and before you began to look for an attorney, when did you first begin to look into the bill?

A. As soon as I came back from Newport News.
[1488—1401]

Q. And that was about December 10th?

A. I left about December 10th. I think it was earlier than that, was it not?

Mr. DIERICX.—That was the time you returned?

A. Yes, I returned December 10th.

Mr. FRANK.—Q. With that now in your mind,

(Testimony of William Matson.)

Captain, how soon after that was it you began to take it up?

A. Just as soon as I got to the office I commenced to look into the bill because I had not got the time-keeper's report and I do not think we had the bills in the office until a long time after that, or sometime after.

Q. You mean by that to say that the bill was not presented to you until after December 10th?

A. I know it was a long time before I got the bill, yes. I don't believe it was.

Q. Are you speaking now, Captain, from recollection, or are you only speaking from an assumption or a supposition?

A. No, I am speaking from recollection, of going right in to find where the bill was. I would not positively state the date when that bill got there, but I know it was a long time after the ship got in commission and running.

Q. Do you make that statement from a report of somebody in your office?

A. I make the statement because I did not get the bills.

Q. Now, Captain, you must remember, of course, that you were away during a considerable time and there must have been someone in your office who has the custody of those bills.

A. Then call Captain Saunders.

Q. Did he have the custody of the bills?

A. He would look over them at that time when they would come in.

(Testimony of William Matson.)

Q. And it is your understanding at present that you did not have any bills in to your office for this, when you returned [1489—1402] on December 10th of that year?

Mr. McCLANAHAN.—His record shows that his return was December 9th or 10th.

Mr. FRANK.—Well, that is immaterial.

A. I could not answer that question straight off because I do not altogether remember the date when those bills came in, and I do not want to—

Q. (Intg.) That is what I want to get at, Captain; then you do not remember whether those bills were in the office at the time of your return or whether they came in afterwards; is that right?

A. I do not believe they were in the office.

Q. Don't you recall testifying this morning that while you were east you received a telegram as to whether or not they should pay, or asking for money for payment on those bills? A. Yes.

Q. Was it not your understanding that the bills were in at the time you received the telegram?

A. Well, they got in there, then, between the time I left and when I came back.

Q. Then, at the time you came back did you take the matter up? A. Yes.

Q. With anybody?

A. No, I looked over the bills. I don't know whether I took it up with Brobeck at that time, at the time I asked you. The dates I don't remember.

Q. Before you began to look for an attorney in the matter, did you not examine into the details of the

(Testimony of William Matson.)

bill? A. Yes, I did.

Q. With whom? A. With myself.

Q. With yourself? A. Yes.

Q. I show you "Schedule No. 1" attached to the libel in this case and ask you whether you recognize that as the bill that was then presented to you (handing). [1490—1403]

Mr. McCLANAHAN.—You mean a copy of the bill.

Mr. FRANK.—Yes.

Mr. McCLANAHAN.—Q. There are a number of pages to that, Captain.

A. Is that the bill attached to it?

Mr. McCLANAHAN.—That is what you are looking at now.

Mr. FRANK.—That is the whole bill.

A. That is the bill, is it?

Q. Yes, that is our understanding of it. What I want to get at is whether that is what you recognize as the bill? A. I never read that part of it.

Q. You never read that part of it, that is, referring to the heading of the bill?

A. No. I think that is the bill so far as I recollect.

Q. Have you the original bill in your possession that was presented to you at that time?

A. I have not got it now. I don't know whether the attorney has it, or somebody else.

Mr. FRANK.—(Addressing Mr. McClanahan.) Have you got the bill?

Mr. McCLANAHAN.—I don't think I have.

(Testimony of William Matson.)

Mr. FRANK.—I wish you would look through your papers, Mr. McClanahan. I would like to see it.

Mr. McCLANAHAN.—I don't remember ever receiving the original bills.

Mr. FRANK.—That is from your client.

Mr. McCLANAHAN.—Or from any source.

Mr. FRANK.—Well, it would come from your client. That is the only source.

Q. You turned them over to somebody, Captain, and you do not know what has become of them?

A. I turned them over to the office, or to Brobeck, or up here. We will try to hunt for them. [1491—1404]

Q. Yes, I would like to see the originals. Now, I understood you to say, Captain, when you looked over this "Schedule 1," that pages 1, 2 and 3 of that schedule, which contain the detail of the work done, you never looked at those?

A. I don't know. No, I never read that.

Q. What is that?

A. I did not read that summons through.

Q. It is no summons. A. Is it the bill?

Q. Yes.

A. Well, I read the whole bill through; yes.

Q. And you went through this detail, did you not?

A. As far as I can remember, yes,

Q. Just look at that bill, and I am referring now to pages 1, 2 and 3.

A. I would rather wait until you get the original bill. I do not know whether that is the true copy

(Testimony of William Matson.)

of it, or not. I don't remember those things. I have not got that by heart.

Mr. FRANK.—Mr. McClanahan, is there any question as to whether or not that is a true copy of the bill as originally rendered?

Mr. McCLANAHAN.—I raise no question of that kind.

Mr. FRANK.—Q. Do you accept the admission of your attorney that that is a true copy? He raises no question of that kind.

A. If he remembers, though, then I suppose it is.

Q. Assuming that that is a true copy of the original bill as presented to you, just kindly take that and go over it and indicate to me what portions of that work indicated on pages 1, 2 and 3, you objected to or found fault with at the time the bill was rendered to you.

A. Well, Mr. Frank, you had better give me a day off because I will not do it here. It was easy to find fault with a bill that was rendered for \$34,000 as against \$11,749. [1492—1405]

Q. Was that the basis of your objection to the bill?

A. Well, there were charges in there that I don't think was done on the ship.

Q. Well, point those out.

A. No, I will not. You had better give me a day off; I am not going through that whole list. You cannot go on with the Court unless I sit down and go through it. I objected against the bill as it stood, yes.

Q. Take all the time you desire now, Captain,

(Testimony of William Matson.)

whether it is a day off or a day on. I would like you to go through the bill now in our presence. So far as the time is concerned we might as well take it here as anywhere else.

Mr. McCLANAHAN.—I object to the witness being asked to undertake a job of that kind. In the first place, it is not to be expected that a man could remember—if Captain Matson has not seen that bill since he first received it—that he could remember the objections he raised to the bill at that time. I object to any such requirement of the witness at this time.

Mr. FRANK.—That is a legal objection, is it, Mr. McClanahan.

Mr. McCLANAHAN.—I hope it is; the Court can pass upon that.

Mr. FRANK.—We think we have a perfect right to ask the witness to go over the bill and indicate what he found to be wrong.

Mr. McCLANAHAN.—And I raise the further objection that the witness has not said he could do it at this time.

Mr. FRANK.—That might be evidence that there was nothing wrong with it.

Mr. McCLANAHAN.—You are welcome to that evidence.

Mr. FRANK.—I still insist upon you giving me an answer to my question. You can at least attempt it, Captain. The bill is there before you. There are the items in detail, and if you [1493—1406] had any objection to those items then you would

(Testimony of William Matson.)

know it now just as well as you do it then.

Mr. McCLANAHAN.—I object to that as an assumption on the part of counsel.

Mr. FRANK.—The objection does not make any difference, Captain. That is for the Court afterwards. Go on, Captain.

A. I am not going through that bill unless I have the original bill and sit down and go through the whole of it. I objected to the whole business pretty near.

Q. What is that?

A. As a bill I objected to the bill because it was incorrect.

Q. I am trying to find out in what respects it is incorrect.

A. Mr. Frank, you know very well that no man can carry this in his mind. This whole thing will require lots of time. It will require the original bill to check off what should not be there and what should be there. I am telling you now that I could not do that offhanded.

Q. What is there on the original bill that was presented to you that is not on this bill here and that would aid you in that work?

A. Mr. Frank, the contract was \$11,749; look at the items of that.

Q. Was that the only thing you did to check up the bill when you made your objection and determined to resist the payment of it?

A. The bill was too big.

Q. I am asking you now was that the only reason

(Testimony of William Matson.)

that you determined that the bill was too big?

A. Well, that is a good reason, is it not?

Q. That is not an answer, Captain. Was that the only reason at that time?

A. I think I would like to refuse to answer those questions unless I get a chance to get down to [1494—1407] it in detail. I have not got it by heart. In fact, I have not seen the bill since that time when I turned it over to Brobeck, and I never thought about it.

Q. I am asking you now the simple question if—

A. (Intg.) Yes, I know what you are trying to get after, and I refuse to answer. You give me time to get the original bill and sit down and look at it.

Q. Will you answer my direct question, Captain? All I want to know from you now is whether or not the reason you have stated was the only reason you objected to that bill. That is not a matter that you have to consult any papers on.

A. I refuse to answer the question.

Q. You refuse to answer the question?

A. Yes, because I want the original bill and a chance to sit down to go over it. I don't want you to trip me up on something.

Q. Well, I am not trying to trip you up.

A. Yes, you are trying to. There is no living man on earth who knows that by heart, who only saw it once or twice in his office, and went over it, and then two years afterwards to tell you everything that is in that bill.

Q. I am not asking you that. You say you ob-

(Testimony of William Matson.)

jected to it because you thought you had a contract—

A. (Intg.) I did not think so. I had one.

Q. A contract for \$11,000 odd, and here is a bill for \$33,000. Now, I am asking you if that is the only reason you objected to the payment of that bill.

A. Well, of course, the bill could not be right—

Mr. McCLANAHAN.—Just a moment, Captain. I object to the question upon the ground that it is immaterial, whether that was [1495—1408] his only reason or not. That was a sufficient reason.

Mr. FRANK.—Q. Did you check up that bill at all? A. I refuse to answer you.

Q. You refuse to answer me whether you checked up the bill or not?

A. Of course I checked up the bill and looked it over and in my opinion it was wrong.

Q. What did you check it up with?

A. I refuse to answer a ridiculous question like that. I had a contract there you know that I went by. Everybody knows what I should check it up by.

Q. Is that what you checked up by, against the contract, is that all? A. Is not that enough?

Q. I am simply asking you, Captain. I am not arguing it with you. A. Well, all right.

Q. What did you do with reports of your engineer?

A. What report—that report (pointing)?

Q. No, you had another report from Mr. Putzar, did you not?

A. I didn't know what came out of it. I suppose that is what the book is made up from.

(Testimony of William Matson.)

Q. Where is the other report? A. I don't know.

Q. Did you turn it over to your counsel?

A. I don't know whether I did or not. It is in the office, I suppose. I could not tell you.

Mr. FRANK.—(Addressing Mr. McClanahan.) Have you got that report, Mr. McClanahan?

Mr. McCLANAHAN.—Do you want me to produce it?

Mr. FRANK.—I would like to see it.

Mr. McCLANAHAN.—Do you want me to produce it?

Mr. FRANK.—I ask you to produce it for my inspection.

Mr. McCLANAHAN.—Q. Is that the report, Captain, that you refer to? A. Yes. [1496—1409]

Mr. McCLANAHAN.—I hand the counsel a letter dated January 11, 1910, addressed to the Matson Navigation Company and signed by E. L. Putzar, with attached documents, for inspection. (Handing.)

Mr. FRANK.—This is too long for me to go through critically at this sitting.

Mr. McCLANAHAN.—Introduce it, Mr. Frank.

Mr. FRANK.—No, I won't introduce it in evidence unless it is material and I have an opportunity to go over it; I should like to have it again, Mr. McClanahan, at my leisure. Do not put it away, because I would like to have it for the purpose of looking over it and examining it.

Q. Captain, after you got that report from Mr.

(Testimony of William Matson.)

Putzar did you check up the bill with reference to that report?

A. I glanced over it and saw it was not what I was looking for.

Q. So you did not pay any attention to the report?

A. No.

Q. What was it you were looking for that is not contained in the report?

A. As I told you before lunch, I was looking for a time-book that he would put the men down that were working in the morning, and check them up at night, from day to day. I was not looking for a report that was made up, I wanted that time-book which the man that keeps time generally carries with him, so that I could check up the time and see what had been done.

Q. You did not think of looking to the time-sheets that were handed in to you for that purpose, did you?

A. I wanted the time-book.

Q. What did you want to check up the time for if as you said a few minutes ago you objected to the bill because you had a contract for \$11,000 and the bill stood for \$33,000? [1497—1410]

A. Because I was going to have a reduction there of a couple of thousand dollars, and I wanted to know what they had been doing; not alone getting a reduction but I had more than twice the amount of money spent.

Q. That was it, was it? What were you to get a reduction for?

A. Taking out the crank-shaft—if they did not

(Testimony of William Matson.)

take it out I was to get a reduction.

Q. That was the only thing? A. Yes.

Q. You spoke this morning, Captain, of having made a contract for the smokestack? A. Yes.

Q. And also of having made a contract for the tank-top? A. Yes.

Q. It was not a contract for the tank-top, you exhibited here a bid which you rejected; is that right?

A. Yes.

Q. Were there any other, what we might call minor contracts made for that ship?

A. There were only those two. That contract was made at \$1250, and a guarantee that he would do it within those figures and that the ship would not be delayed by that.

Q. And the smokestack contract?

A. The smokestack the same way, \$900, to take it out and put it in, and the ship was not to be delayed.

Q. And no other part of the work performed on that ship at that time, which was outside of the original specifications, was contracted for at any figure; is that your understanding?

A. Not that I remember; not with me.

Q. Could it have been done with somebody else?

A. It should not have been.

Q. It should not have been contracted for?

A. Except some minor small changes. I told you about the patch on the condenser this morning which the chief engineer had [1498—1411] spoke to me about and said it would be less money and thought it would be all right to put that patch on.

(Testimony of William Matson.)

Q. And none other of the work which was done on that ship at that time was, according to your understanding, contracted for at an agreed figure?

Mr. McCLANAHAN.—I object to that. The witness has not said that. He said not with him.

Mr. FRANK.—Yes, and he has said more than that Mr. McClanahan.

Mr. McCLANAHAN.—Well, I refer to the record.

Mr. FRANK.—Well, we will let the witness straighten it out; you do not need to interfere with it.

Q. Is that the fact, Captain, as I have asked you? Just read the question to the witness, Mr. Reporter.

(Question read to the Reporter.)

Mr. McCLANAHAN.—I object to the question, further, upon the ground that the witness has expressly claimed that the principal work done on the ship was under a contract for \$11,749.

Mr. FRANK.—Well, you are not improving it any, Mr. McClanahan. Now, go on, Captain.

A. Well, that was the contract in the first place, \$11,749, and the \$1250 for the tank-top and \$900 for the smokestack which he agreed to take out and put in again in the same ship.

Q. Is that all? A. That is all I remember.

Q. Let me see whether I can help you to remember. We have here certain schedules which are admitted as correct, with the exception of two of them, which are admitted except that as to certain items the amounts are not admitted. I will ask you, showing you "Schedule No. 4" whether or not these several

(Testimony of William Matson.)

matters were agreed upon for a fixed price. [1499—1412]

Mr. McCLANAHAN.—I will ask you, Mr. Frank, if you mean by “admitted” admitted by the pleadings?

Mr. FRANK.—Yes, admitted by the pleadings.

A. That is a pretty hard proposition to state.

Mr. McCLANAHAN.—Not that one, Captain, the other one.

A. The spring-bearings—I remember there was something said about spring-bearings, but I cannot recollect how the Chief Engineer happened to tell me something. If Klitgaard ordered that done I guess it was all right.

Mr. FRANK.—Q. That is “Schedule No. 4.” Now, I show you “Schedule No. 5” and ask you if anybody agreed to that?

A. That was never put up to me.

Q. It was never put up to you? A. No.

Mr. McCLANAHAN.—Mr. Frank, what is the materiality of this examination if we have admitted in our answer that those contracts are correct?

Mr. FRANK.—I will develop the materiality afterwards.

Q. Now, I show you “Schedule No. 6” and ask you who agreed to that?

A. I don’t know anything about that.

Q. Now, I show you “Schedule No. 7” and ask you who agreed to that.

A. I don’t remember anything about that. The trouble with this is, you know you have to take the

(Testimony of William Matson.)

specifications and go through them. It may be that Klitgaard said something to me but I don't remember anything about it.

Q. I show you "Schedule No. 8" and ask you who agreed to that. A. I don't know.

Q. I show you "Schedule No. 9" and ask you who agreed to that.

A. I agreed to that myself, the \$900, but I did not agree to the extras.

Q. You did not agree to the extras? A. No.

Q. You do not know who did? [1500—1413]

A. No, I don't think anybody did, Mr. Frank.

Q. Well, that is your think, Captain.

A. Well, I know.

Q. How do you know?

A. Because nobody could. I made a contract there with him to take that out and put the smokestack in in place and in good order and ready to go to sea and to take no time of the 25 days while she was to be in the dock or in the shipyard.

Q. You did that, you said, in the presence of Mr. Klitgaard? A. I did.

Q. And he understood what the agreement was, did he not? A. He heard the conversation.

Q. Now, I will show you "Schedule No. 10" and ask you who agreed to that.

Mr. McCLANAHAN.—I object to all these questions as immaterial under the pleadings.

A. I see you get the owners in on the bill anyway. I do not know.

Mr. FRANK.—Q. Well, at any rate, you yourself

(Testimony of William Matson.)

did not make those agreements, did you? A. No.

Q. You have spoken about "Respondent Matson Exhibit No. 1" as having been an agreement; you rejected the bid, did you not?

A. I did not reject it. I told him I would accept his bid with the understanding that if it could be done for less money I was to get credit for it.

Q. Who wrote that word "rejected" on there?

A. I do not know.

Q. Just look at it and see if you recognize the handwriting (handing)? A. No.

Q. Do you know, as a matter of fact, Captain, that a great deal more work was done on that tank than is mentioned here [1501—1414] in this letter and that the work was entirely different from what is mentioned in this double-bottomed tank?

A. I did not know it.

Q. You did not know it? A. No.

Q. You did not check that up with Mr. Putzar or anybody else's report, did you?

A. No, because I felt that his report was so conflicting that I could not get at what I wanted to get at.

Q. Whose report was conflicting?

A. I mean the time kept on the different jobs.

Q. The time kept on the different jobs was conflicting with what? A. With that contract.

Q. In what way?

A. It was not segregated enough. I expected, Mr. Frank, that that tank-top would be finished within the \$1250, as he agreed to do it.

Q. You did not know, then, as a matter of fact,

(Testimony of William Matson.)

that it was impossible to do the work as specified in this letter after the matter was torn up, did you, on account of the bad condition of the rest of the tank-top?

Mr. McCLANAHAN.—I object to the question upon the ground that there is no evidence to support the statement.

Mr. FRANK.—Q. Is that the fact, Captain?

A. I do not remember it.

Q. Now, as a matter of fact, Captain, you never looked in to any of these reports or any of these matters to ascertain what work was done and what work was not done on that ship, did you?

A. I did look through the bills and found there was more charged than they had any right to charge.

Q. That is not an answer to my question, Captain. I am asking you about the work done; you never examined any of the reports or made any effort to find out whether the work which is specified in the bill was actually done on the vessel? [1502—1415]

A. I am not an expert and I do not want to say.

Q. Then you did not do it, did you, not being an expert?

A. I told you I looked over the bills and looked over the contract. The bills that came from the United Engineering Works were so in excess of what the man agreed to do, there was no chance to ratify them.

Q. Then, as a matter of fact, you do not know to-day what work was done on that vessel?

(Testimony of William Matson.)

A. Yes, I do know all the work that was done on that ship.

Q. When did you find it out?

A. I found it out as soon as she was afloat.

Q. As soon as she was afloat?

A. Yes, after she came back from the Islands and when I came back from the east.

Q. How did you find out?

A. Well, I can find it out by going down on the ship and looking, could I not? And I would have been glad to have you along with me.

Q. That is the only way you informed yourself, by going down there and looking?

A. That is the only way to find out.

Q. I say that is the only way you informed yourself, is it? A. And looking at the bills.

Q. You never informed yourself through the reports of any engineers, or anybody else?

A. I only had that time report; that is all I had.

Q. You did not have Klitgaard's report?

A. No.

Q. And you did not speak to Klitgaard about it?

A. No, and I have not asked him about it to-day, that I can remember.

Q. Did you ask Saunders?

A. I probably spoke to him about it. [1503—1416]

Q. You say "probably"; do you remember having spoken to him about it?

A. It is natural I would talk to him about it.

Q. But you have not any recollection now of any conversation with him on the subject?

(Testimony of William Matson.)

A. Not the dates, but I talked to him several times. You don't suppose for a minute that I would refuse to pay the bill unless I had some conversation about it and looked over some bills, do you?

Q. Did Captain Saunders purport to know the details of the work that was done on the ship?

A. No. I think we went through the bills together or he reported a bill to me; I don't know if he reported the details.

Q. But that is all, you and he went through the bills together—is that it?

A. What else could we go through?

Q. I am not answering the questions, Captain.

A. Then I refuse to answer you.

Q. Very well. Now, Captain, there were further bids, were there not, at the time these first specifications were bid upon? A. Yes.

Q. What other companies bid?

A. The Union Iron Works.

Q. What other?

A. I think the Risdon, if I am not mistaken.

Q. Have you those bids now?

A. I don't know whether I have or not. I think they probably will be in their office, at least the Union Iron Works. I don't know if the other has.

Q. Don't you keep copies of those?

Mr. McCLANAHAN.—We have those, Mr. Frank. Do you wish to see them?

Mr. FRANK.—Yes.

The WITNESS.—I don't carry them in my vest pocket, you know, Mr. Frank.

(Testimony of William Matson.)

Mr. FRANK.—Captain, there is no profit in that kind of [1504—1417] talk or banter.

Mr. McCLANAHAN.—Mr. Frank, I object to your lecturing the witness.

Mr. FRANK.—We are just trying to get at this thing, Captain, in a reasonable sort of way, by question and answer.

The WITNESS.—Well, go ahead then.

Mr. McCLANAHAN.—I will get them for you later on, Mr. Frank. I do not think I can put my hand on them now.

Mr. FRANK.—I will wait a few moments. I would like to finish with that before I take up another subject.

Mr. McCLANAHAN.—Probably by mistake, Mr. Frank, they have been mixed up with some other files. I cannot put my hands on them now. If they cannot be found we will get copies of them. I remember very distinctly seeing them. Here are two copies of them. The Union Iron Works bid twice. Here is the second bid (handing).

Mr. FRANK.—Q. Now, Captain, do you remember the machinists' strike here in San Francisco just preceding the time when this work was done?

A. No, I do not remember it.

Q. You do not remember it? A. No.

Q. Did you not know there was a strike here?

A. I heard about it; yes. I don't remember much about it but I know there was a strike, or was to be one; I don't know whether there was one or not—yes, there was one, but whether it was at the time of

(Testimony of William Matson.)

the fixing of the ship or not I do not remember.

Q. You were connected with that, were you not, in the way of a committee on behalf of the employers?

A. I think you have the cart before the horse.

Q. Well, then, put the horse in his proper place.
[1505—1418]

A. I was connected last summer with that. Last summer was the first time I was ever connected with the conciliation movement.

Q. But you knew there was a strike previous to that in which the machinists prevailed?

A. A good many years ago.

Q. No, just a short time previous to August, 1909.

Mr. McCLANAHAN.—I object to that question upon the ground that there is no evidence of any strike just previous to August, 1909.

A. I do not remember what that strike was; I could not tell you.

Mr. FRANK.—Q. Well, at any rate, it was previous to this “Hilonian” job?

A. I don’t remember that even.

Q. You do not? A. No.

Q. You know there was a strike in which there was an increased wage given to the machinists, was there not?

A. That was a good many years ago, wasn’t it?

Q. Well, say 3, 4 or 5 years.

A. I don’t know anything about what was done.

Q. Where is Mr. Klitgaard now, Captain?

A. I don’t know.

Q. You don’t know? A. No.

(Testimony of William Matson.)

Q. Are you paying any personal attention to this case at all, Captain? A. No, I have not so far.

Q. Nothing at all?

A. No. I have had a good deal to do with it since I got before you though; I wish I had taken and studied it up a little.

Q. It is all in the hands of Mr. Diericx, is it?

A. He has been looking out for it.

Q. He has been looking for it ever since he came into your employ?

A. Yes, he handled the bills and looked into the [1506—1419] different things.

Q. I understood you this morning to say that Klitgaard had suggested to you that the crank-shaft was all right, before you made the contract?

A. He thought that it might be all right.

Q. Before you made the contract, what you call the contract with the United Engineering Works?

Mr. McCLANAHAN.—The question has been answered.

Mr. FRANK.—I do not think so. Just answer the question, Captain.

A. Well, Mr. Frank, I answered this morning and I told you he thought that it might not have to come out. Christy went out with Captain Saunders to look at the shaft when the ship came in, and he also reported that he thought that the shaft looked all right.

Q. That was before these conversations with Mr. Gray?

A. You mean before the contract with him?

(Testimony of William Matson.)

Q. Yes. A. Gray thought it had to come out.

Q. That was before—

A. (Intg.) Before the contract was let, you mean?

Q. Yes. A. Yes.

Q. You say Christy reported; to whom did he report? A. To me.

Q. To you personally?

A. Yes. Who else would he report to?

Q. I am sure I don't know, Captain. I just wanted to know who you thought he reported to; that is all. Now, will you relate again with reference to the crank-shaft just exactly what was said by you and Mr. Gray?

Mr. McCLANAHAN.—I object to that as unnecessary repetition. He has already related it in his direct examination and in his cross-examination.

Mr. FRANK.—Q. Go on, Captain. [1507—1420]

A. What was said when I gave the contract was that I was to put on a timekeeper there, and we were to get the benefit of a couple of thousand dollars if the crank-shaft did not come out.

Q. What did he say? Did he use the words “a couple of thousand dollars”? A. Yes, about that.

Q. What? A. About that, he said.

Q. About that?

A. Yes. I cannot remember exactly the words spoken anyway, it is a long time ago.

Q. Then you do not want us to understand that he made an agreement to give you a couple of thousand dollars if the crank-shaft did not come out?

(Testimony of William Matson.)

A. Yes, I do.

Q. Oh, that is what you mean, now, is it?

A. Yes.

Q. By "a couple" what do you mean?

A. \$2,000.

Q. What did you put the timekeeper on for if you were to get absolutely \$2,000?

A. I tried to explain that to you this morning, Mr. Frank, and you are now trying to go over the same ground to see if I will jump the track or not.

Q. No, Captain.

A. That is just what you're after. I put the timekeeper on there to see that we would get what belonged to us.

Q. And what was that? A. \$2,000.

Q. Then what instructions did you give Mr. Putzar when he went over there?

A. To keep time on everything.

Q. And that is all you said to him?

A. That is all that I remember.

Q. You have been doing business also with the Union Iron Works, Captain, have you not?

A. Yes.

Q. Have you in your possession any bills rendered by the Union Iron Works during the past two years?
[1508—1421]

Mr. McCLANAHAN.—I object to that as immaterial.

A. I think we have bills in the office.

Mr. FRANK.—Q. Well, will you produce those?

Mr. McCLANAHAN.—I instruct the witness not

(Testimony of William Matson.)

to produce them until ordered to do so by the Court unless you can show me the materiality, Mr. Frank.

Mr. FRANK.—I guess that is all, then.

Redirect Examination.

Mr. McCLANAHAN.—Q. Captain, has the Matson Navigation Company ever tendered to the United Engineering Works a check that covered the contract price which was agreed to be paid under the original bid? A. I believe we have.

Q. Do you remember when the check was tendered?

A. I do not remember the date. I think I was east at the time.

Mr. FRANK.—Q. If you were east then, Captain, how do you know?

Mr. McCLANAHAN.—Just wait a minute, Mr. Frank.

Mr. FRANK.—I am objecting.

Mr. McCLANAHAN.—Well, you are not to address the witness.

Mr. FRANK.—I move to strike it out as hearsay.

Mr. McCLANAHAN.—Q. Do you not know, Captain, that that check was made out and tendered?

A. Yes, I do.

Mr. FRANK.—I will have the privilege of examining him on that point.

Mr. McCLANAHAN.—You will after I have finished my direct examination, Mr. Frank.

Mr. FRANK.—Very well.

Mr. McCLANAHAN.—Q. Captain Matson, I hand you a letter dated "December 9, 1909," and

(Testimony of William Matson.)

ask you if you can identify it (handing).

A. Yes. [1509—1422]

Q. At the date of that letter, December 9, 1909—

A. (Intg.) I think it was handed to me sometime just when I got back from the east.

Q. Had you received Mr. Putzar's report which was submitted to Mr. Frank for examination, dated January, 1911? A. No, I had not. [1510—1422½]

Q. You read this letter, did you, Captain?

A. Yes, sir.

Mr. McCLANAHAN.—I offer in evidence the letter identified by the witness dated December 9th, 1909, addressed to the Matson Navigation Company, and signed by United Engineering Works, per Sam J. Eva, Pres., and ask that it be marked Respondent's Matson Exhibit No. 2.

(The letter is marked "Respondent's Matson Exhibit No. 2" and is as follows:)

[Respondent's Matson Exhibit No. 2.]

"San Francisco, Cal., December 9th, 1909.

Matson Navigation Company

268 Market Street,

San Francisco, Cal.

Attention of Captain Wm. Matson.

Gentlemen:

Enclosed please find statement for work performed on your Str. 'Hilonian' for which we would be pleased to receive a check on or before the 11th inst. If you are not prepared to pay this amount

(Testimony of William Matson.)

within the time specified, you will kindly let us know your reasons for not paying same.

Yours truly,

UNITED ENGINEERING WORKS,

Per SAM J. EVA, Pres."

Q. I hand you another letter, Captain, and ask you if you can identify that letter (handing).

A. Yes, sir, I remember that letter.

Q. It was received in the regular course of mail, was it?

A. Yes, sir. I think I asked for an itemized statement.

Mr. McCLANAHAN.—I offer in evidence the letter identified by the witness dated December 11th, 1909, addressed to the Matson Navigation Company, and signed United Engineering Works, by Sam. [1511—1423] J. Eva, Pres., and ask that it be marked Respondent's Matson Exhibit No. 3.

(The letter is marked "Respondent's Matson Exhibit No. 3," and is as follows:)

[Respondent's Matson Exhibit No. 3.]

"San Francisco, Cal., December 11th, 1909.

Matson Navigation Company,

268 Market Street,

San Francisco, Cal.

Attention of Captain Wm. Matson.

Gentlemen:

The writer has tried several times to get you by phone, to ascertain what is your final decision regarding the payment of bills rendered for work per-

(Testimony of William Matson.)

formed on your Str. 'Hilonian,' so we write you to inform you that we have instructed Mr. Frank, who will represent us in this case, to take such steps to protect our interests and proceed to collect the several bills as rendered.

Yours very truly,

UNITED ENGINEERING WORKS,

Per SAM. J. EVA, Pres."

Q. Calling your attention, Captain, to the letter just introduced in evidence, I will ask you whether or no this conversation which you had with Mr. Frank, which has been referred to, was after the receipt of that letter.

A. I could not remember that.

Q. You could not remember that? A. No, sir.

Q. Referring again to that letter, I will ask you whether or not at the date of the receipt by you of this report of Putzar's dated January 11th, 1910, this matter was then to your knowledge in the hands of attorneys.

A. Excuse me; I want to look at this letter. You say the letter of January 11th? [1512—1424]

Q. Read the question, Mr. Reporter.

(The Reporter reads the question.)

A. As far as I remember, yes.

Q. Had Mr. Putzar prior to the receipt by you of his report of January 11th, 1910, been requested to make a report of that character?

A. Yes, sir; I requested Captain Saunders to tell him to get his report in right away.

Q. What was that report to consist of?

(Testimony of William Matson.)

A. Of his time.

Q. Will you please inspect of Mr. Putzar accompanying the letter of January 11th, 1910, and state whether or not he was ever requested to make such a report as that.

A. I can tell you that without looking at it over again, because I have looked at it; no. I wanted the time that he was put there to take from the men.

Q. Then the report of January 11th, 1910, was a voluntary report on the part of Mr. Putzar?

Mr. FRANK.—You can draw your own conclusions as to that from the evidence.

A. As far as I know, it was. I did not ask for that.

Mr. McCLANAHAN.—Q. While we are on the subject of Mr. Putzar you stated in your cross-examination that Mr. Samuels said that he was all right. I will ask you did you find Mr. Putzar to be all right as a timekeeper on the “Hilonian” job?

A. Well—have I got to answer that?

Q. Yes. A. I don't want to.

Q. Well, answer it.

A. I don't think he was all right.

Q. Did you know at any time how Putzar was keeping time on that job? A. No, I did not.

Q. Did you know at any time what form his report on the time to be kept on the job was to take?

A. No, sir, I did not. I expected him [1513—1425] just to keep the time of the men as they were working.

Q. You had no knowledge at any time that he was

(Testimony of William Matson.)

keeping this time-book which has been introduced as
“Respondent’s Curtis No. 4”?

A. No, sir, I never did.

Q. You did not know at any time that he was keeping time on the ship alone?

Mr. FRANK.—I object to this leading. You are testifying in this matter, Mr. McClanahan.

Mr. McCLANAHAN.—Q. Answer the question.

A. I have told you no.

Q. You said, Captain, in answer to a question propounded by Mr. Frank that the first time the subject of the crank-shaft came up was at this hearing, and this morning in your direct examination you said that the subject of the crank-shaft had been discussed between you and Mr. Christy, and between you and Mr. Klitgaard and you and Mr. Gray. Can you explain your statement on your cross-examination?

A. I thought I always said the same proposition, that it had been discussed. Christy went out on the bay to look at the shaft as the steamer came in, and he thought the shaft was all right. Mr. Gray did not think it was right. Klitgaard thought it was right.

Q. Mr. Christy’s report or statement to you about the shaft was made before the bid was let, was it not?

A. I think so.

Mr. FRANK.—Do you consider that a proper way to examine the witness, Mr. McClanahan? If you do, I am powerless to stop you.

Mr. McCLANAHAN.—You are not powerless to make a proper legal objection.

(Testimony of William Matson.)

Mr. FRANK.—Legal objections seem to be of no avail.

Mr. McCLANAHAN.—Ditto with you, as the record in this case will show. [1514—1426]

Q. Captain, you also said on your cross-examination that on several visits made to the ship you met none of the officials of the United Engineering Works.

A. I was over there several times when I did not meet anybody. I was also there the last time, when I made that contract for the smokestack. I did meet Mr. Gray there then.

Q. You have stated on cross-examination that the only thing you wanted time for was on the crank-shaft, and in your direct examination this morning you stated that there was an agreement that time should be kept on the tank-top work. A. Yes, sir.

Q. Which is correct?

A. This morning is correct. I must have made some error.

Mr. McCLANAHAN.—I think that is all.

Recross-examination.

Mr. FRANK.—Q. Mr. Matson, you have spoken about tendering \$11,750. You said you were not here at that time. How do you know that such an amount was tendered?

A. I think by telegraphs. I am not sure.

Q. By telegraphs? A. Yes, sir.

Q. That is, somebody telegraphed to you?

A. Telegraphed to me when I was in the east that they wanted money.

(Testimony of William Matson.)

Q. That who wanted money?

A. The United Engineering Company.

Q. What did you reply?

A. I told them to pay what we thought we owed them, the contract price, and we had several small contracts that were added in that.

Q. That is all you know about what was tendered to them? A. Yes, sir.

Q. So, of your own knowledge, you do not know anything about it at all? A. I see the check.

Q. Where is the check?

A. I think the check is in the office. [1515—1427]

Q. Just kindly produce that to-morrow morning. We expect you to be here to-morrow morning and to produce that check. I will make a memorandum of it while I think of it. A. I will produce it.

Q. I don't want to forget it.

A. You will get it all right.

Q. Now, you have introduced in evidence here two letters, December 9th, 1909, and December 11th, 1909, and in the one of December 11th, 1909, you are advised that the United Engineering Works had instructed me to represent them in this case.

A. In one of the letters.

Q. Now, of course, it was long before you got that letter when you spoke to me, was it not?

A. I don't remember, Mr. Frank.

Q. It must have been, must it not, Captain?

A. I would not say.

Q. You would not have asked me to represent you in this case if you had in your possession a letter

(Testimony of William Matson.)

telling you that I was representing the other side, would you?

A. It don't look like it; at the same time I don't know how many days before that letter I did ask you.

Q. It was, then, before that letter some time?

A. Sure, or at least I think it was.

Q. You don't wish us to understand, Captain, that the enclosing of the statement with the letter of September 9th was the first statement that you had of the bill and demand in this case?

A. I don't know how many days there were; there were not very many days before that letter was written that the bill was produced. I don't remember; I have not got it in my head. Probably you can find the original bill, and I will give you the date that the bills were sent in. [1516—1428]

Q. Was not the date the bills were sent in the date which this bill bears here, of September 27th?

A. I don't remember.

Q. You would not undertake to say it was not?

A. I don't remember.

Q. You would not undertake to say it was not?

A. I refuse to answer.

Q. Don't you know as a matter of fact—let me ask you another question before we come to that. It has been your practice, has it not, in your transactions with this company to pay your bills sixty days *after presented*? A. Sooner than that.

Q. What length of time?

A. I could not tell you.

(Testimony of William Matson.)

Q. Could you not tell me if it was sooner than 60 days?

A. I often gave them money in thirty days, or less time; when they needed it. I don't carry that on a memorandum, Mr. Frank.

Q. I am simply asking you not for the exception but for the rule.

A. As a rule we generally pay bills in thirty days.

Q. Now, do you remember a check that was given to the United Engineering Works on November 24th, which included \$11,700 odd and all of certain minor contracts?

A. It amounted to something around \$15,000 or \$16,000.

Q. I don't remember the exact amount, but do you remember the bill of that sort on November 24th?

A. I thought you just asked me for that check to-morrow morning.

Q. That is the check that you referred to?

A. Yes, sir.

Q. At the time that check was issued you had already had the bill, did you not, from the company?

A. I suppose so.

Q. And had had it at least thirty days?

A. I don't know.

Q. You will produce that then to-morrow morning? A. Sure I will. [1517—1429]

Q. And we will go on to-morrow morning and finish it up.

Mr. McCLANAHAN.—I am satisfied that Captain Matson cannot produce that check.

(Testimony of William Matson.)

The WITNESS.—I really thought I could.

(A conversation ensues between the witness and counsel, in which he produces a telegram.)

Mr. FRANK.—Q. This telegram, then, is a telegram which you received from Mr. Gregg, the secretary of your company, on the date it bears; is that right? (Hanging.) A. I guess so.

Mr. FRANK.—We ask that that telegram be put in evidence and marked Matson Exhibit No. 4.

(The telegram is marked “Matson Exhibit No. 4” and is as follows:)

[Matson Exhibit No. 4.]

“WESTERN UNION TELEGRAPH COMPANY.

November 26, 1909.

Captain Wm. Matson,

Hotel Belmont,

New York City, N. Y.

I made check United Engineering Works Fifteen Thousand Five hundred dollars Contract ‘Hilonian’ and sundry bills ordered. They refused accept same unless shown on account which I would not do.

HARRY B. GREGG.”

Q. Now, Captain, with respect to the request made of Mr. Putzar for his report, all that you know about it is that you asked Captain Saunders to ask him for a report; is that right?

Mr. McCLANAHAN.—I object to that. It has already been gone over on cross-examination, and you have ended your cross-examination and I have ended my redirect and you have ended your [1518—

(Testimony of William Matson.)

1430] recross-examination. This is not proper at this time.

Mr. FRANK.—Q. Answer the question, Mr. Matson.

A. I instructed Captain Saunders to tell him what I wanted. I wanted the report of his time-book sent in to the office.

Mr. FRANK.—That is all.

The WITNESS.—You understand, then, that I cannot produce that check.

Mr. FRANK.—Yes, that is settled.

(An adjournment is here taken until to-morrow, Tuesday, October 31st, 1911, at 10 A. M.) [1519—1431]

Tuesday, October 31st, 1911.

[Testimony of Charles W. Saunders, for Respondent.]

CHARLES W. SAUNDERS, called for the respondent, sworn.

Mr. McCLANAHAN.—Mr. Frank, we have discovered the original bids of the Union Iron Works and the Risdon Iron Works called for by you yesterday, and now submit them to you for your inspection.

Mr. FRANK.—All right.

Mr. McCLANAHAN.—We offer them in evidence.

Mr. FRANK.—We object to them being offered in evidence upon the ground that they are irrelevant and immaterial. The fact that I called for an inspec-

(Testimony of Charles W. Saunders.)

tion of them does not entitle you to offer them in evidence.

Mr. McCLANAHAN.—We offer in evidence a letter from the Union Iron Works, dated July 27th, 1909, addressed to the Matson Navigation Company, signed “Union Iron Works Company by George A. Armes,” and ask that it be marked Respondent Matson Exhibit No. 5.

(The letter was marked “Respondent Matson Exhibit No. 5” and is as follows:)

[Respondent Matson Exhibit No. 5.]

“UNION IRON WORKS CO.

San Francisco, July 27th, 1909.

Matson Navigation Company,

San Francisco, Cal.

Gentlemen:—

Replying to your inquiry we offer to make all repairs on your ‘Hilonian’ as per specifications submitted under date of July 22nd, for the sum of \$12,600. We can make these repairs in the time contemplated, 26 days. [1520—1432]

It is further understood that should we be awarded the contract repairs are to be made alongside of wharf at our works.

Trusting that this will meet with your approval and we may receive your valued order, we remain,

Yours truly,

UNION IRON WORKS COMPANY,

By GEO. A. ARMES,

Engineer in Chief.”

(Testimony of Charles W. Saunders.)

And also letter from the Union Iron Works, dated August 9th, 1909, addressed to the Matson Navigation Company, signed Union Iron Works Company, by Geo. A. Armes, Engineer in Chief, and ask that it be marked Respondent Matson Exhibit No. 6.

(The letter is marked "Respondent Matson Exhibit No. 6," and is as follows:)

[Respondent Matson Exhibit No. 6.]

"UNION IRON WORKS CO.

San Francisco, August 9th, 1909.

Matson Navigation Company,

268 Market Street, San Francisco.

Attention Captain Matson.

Gentlemen:—

Replying to your verbal inquiry and supplementing our bid of July 27th, we offer to make repairs to your "S.S. Hilonian" as per specifications submitted for the sum of Twelve thousand five hundred dollars (\$12,500). This price includes the necessary overtime to complete repairs within the time specified.

Trusting this will meet with your approval,

Yours very truly,

UNION IRON WORKS CO.

By GEO. A. ARMES,

Engineer in Chief." [1521—1433]

Mr. FRANK.—I should like to know how you deem these letters material, Mr. McClanahan?

Mr. McCLANAHAN.—Wait until I get them in.

Mr. FRANK.—I am objecting to them.

(Testimony of Charles W. Saunders.)

Mr. McCLANAHAN.—I understand that, and the objection is of record, as I understand.

Also letter from the Risdon Iron & Locomotive Works, dated July 30th, 1909, addressed to the Matson Navigation Company, signed “Risdon Iron & Locomotive Works, by W. H. Taylor, Jr.” and ask that it be marked Respondent Matson Exhibit No. 7.

(The letter is marked “Respondent Matson Exhibit No. 7,” and is as follows:)

[Respondent Matson Exhibit No. 7.]

“RISDON IRON & LOCOMOTIVE WORKS,
San Francisco, July 30th, 1909.

Matson Navigation Company,

268 Market Street, San Francisco.

Gentlemen:—We offer to do repairs to the Steamship ‘Hilonian’ in accordance with your specifications, for the sum of Thirteen thousand five hundred forty-two dollars (\$13,542.)

We could complete the work inside of time specified.

Trusting that we may receive your valued order, we are,

Yours truly,

RISDON IRON & LOCOMOTIVE WORKS,

By W. H. TAYLOR, Jr.,

Vice-President.”

Mr. FRANK.—Now, what is your reply, Mr. McClanahan?

Mr. McCLANAHAN.—They are matters on which Captain Matson was examined by you and were called for by you, and at the time we could only pro-

(Testimony of Charles W. Saunders.)

duce copies. We now produce the originals.
[1522—1434] After you have inspected the same we claim the right to offer them in evidence.

Mr. FRANK.—In the first place, Captain Matson was never examined on them at all. On direct examination he testified as to having received bids from several companies. It is true that I called for an inspection of them but that does not entitle you to introduce them in evidence. I object to them as incompetent and immaterial.

Mr. McCLANAHAN.—You recognize, Mr. Frank, that if they had contained anything helpful to your case you would have offered them in evidence?

Mr. FRANK.—I do not know, Mr. McClanahan, whether I would have been permitted to have done it if I had seen fit. Whether I *shall them* or not is a matter that lies entirely in my discretion.

Mr. McCLANAHAN.—Q. Captain Saunders, what is your full name?

A. Charles W. Saunders.

Q. How old are you, Captain? A. 42.

Q. What is your present business?

A. Superintendent for the Matson Navigation Company.

Q. You are a Master Mariner? A. Yes, sir.

Q. How long have you been superintendent of the Matson Navigation Company?

A. About three years and a half.

Q. What are your duties as superintendent, your present duties?

A. To supervise the general operation of the ship,

(Testimony of Charles W. Saunders.)

loading and discharging, despatch.

Q. Were your duties the same in August and September, 1909?

A. They have been the same ever since I have been with the company.

Q. Do you remember the occasion of the steamship "Hilonian" [1523—1435] prior to August, 1909, needing repairs? A. Yes, sir.

Q. What did you know about that matter?

A. The work had been considered for several months prior to the time that she did undergo repairs. There had been talk about the crank-shaft being out of shape and the ship being in need of an overhauling.

Q. Is that the extent of your knowledge?

A. That is all I knew about it up to the time that the matter was directly taken up.

Q. About what date was the matter of the repair work of the "Hilonian" directly taken up by the Matson Navigation Company?

A. On the return of the ship from Honolulu in July. I think she returned on the 27th of July, if I am not mistaken.

Q. That was the form which the matter took at that time? A. Specifications were gotten out.

Q. By whom?

A. By Mr. Klitgaard, the Chief Engineer.

Q. Would you recognize those specifications if you saw them now? A. Yes, sir.

Q. I hand you a paper and ask you if you can, after reading that over, identify it in any way.

(Testimony of Charles W. Saunders.)

A. That is a copy of the specifications.

Mr. McCLANAHAN.—We offer in evidence the paper identified by the witness and entitled “Specifications for repairs to ‘S.S. Hilonian’ ” and ask that it be marked “Respondent Saunders Exhibit No. 1.”

Mr. FRANK.—I object to it upon the ground that it does not appear that is a copy of the specifications *of the specifications* which were handed to the United Engineering Works. Every time I get a sight of another copy of these alleged [1524—1436] specifications *that* are different.

Mr. McCLANAHAN.—It will be noted, also, that all of the alleged specifications so far introduced in this case have been introduced by the libellant.

Mr. FRANK.—Hardly. That is not the fact. I have produced one, and you have produced one.

Mr. McCLANAHAN.—Q. Captain Saunders, I notice that these specifications are dated July 22d, 1909. Does that assist you at all in fixing the date approximately when they were first prepared?

A. Yes, sir; they were prepared immediately after the arrival of the steamer “Hilonian.”

Q. But you have just stated that the steamer “Hilonian” arrived on the 27th of July.

A. That was to the best of my knowledge at that time. I know that those specifications were not gotten out until the steamer arrived, and the Chief Engineer prepared them, and we had them typewritten in our office with his assistance.

Q. I call your attention to Respondent Siverson Exhibit “A” filed in this case where the closing

(Testimony of Charles W. Saunders.)

words read "Bids will be opened at noon, Tuesday, July 22nd, 1909," and call your attention to your own exhibits where the closing words read: "Bids will be opened Thursday, July 29th, 1909." Can you explain the change in the date, or do you know anything about it? If you have no memory on the matter, Captain, say so.

A. I am in doubt about that, Mr. McClanahan.

Q. You are in doubt about whether you have an explanation, you mean?

A. There is a doubt in my mind now. I think these specifications were gotten out first, and then there was a postponement for some reason.

Q. Postponement of what?

A. Postponement of the inspection [1525—1437] or the opening of bids, I forget which. It has escaped my memory.

Q. Will you please compare Respondent Siverson Exhibit "A" with your Exhibit 1, which has just been introduced in evidence and tell me, if you can, which of those two was the original set of specifications as prepared in the office of the Matson Navigation Company. I want you to compare the whole thing, Captain; it may take some time.

A. (After examination.) I don't understand that discrepancy here.

Q. That is not my question, Captain. Read the question Mr. Reporter, to the witness.

(The Reporter reads the question.)

A. I think this one was the original, and this one was the first copy until the postponement.

(Testimony of Charles W. Saunders.)

Mr. FRANK.—Q. By “this” you mean what?

Mr. McCLANAHAN.—I will clear that up Mr. Frank.

Q. By “this” you mean Siverson Exhibit “A”?

A. I think that was the first copy sent out.

Q. The first copy sent out? A. Yes, sir.

Q. Were there two copies sent out?

A. There were two lots that were typewritten evidently.

Q. Were there two copies submitted to the shops for bids?

A. There were two copies submitted to two shops.

Q. What shops were they?

A. The United and the Union.

Q. And your testimony is that Siverson Exhibit “A” is the first copy? A. Yes, sir.

Q. That was prepared? A. Yes, sir.

Q. What have you got to say about your “Exhibit 1”?

A. I have a faint recollection that there was a postponement [1526—1438] of some sort and this was got out to meet the change in dates.

Q. That is, you refer now to your Exhibit 1?

A. Yes, sir.

Q. What is there on the two exhibits, “Siverson A” and your “Exhibit 1” that brings to your recollection the matter of the change of dates?

A. I don’t think the ship was quite ready.

Q. That is not answering my question. Read the question to the witness, Mr. Reporter.

(The Reporter reads the question.)

(Testimony of Charles W. Saunders.)

A. The change in the opening of the bids.

Q. The change in the time of the opening of the bids?

A. Yes, sir, and also the change in the time for the examination of the steamer.

Q. That is, the change on your Exhibit 1 in those two respects from Siverson Exhibit "A"?

A. Yes, sir.

Q. Were those specifications as originally prepared submitted to anyone for figures?

A. Yes, sir.

Q. To whom?

A. To the United Engineering Works, the Union Iron Works and the Risdon.

Q. Were any bids made by those respective shops on that work? A. Bids were made by all three.

Q. I show you Respondent Christy Exhibit "A" and ask you if you can identify that exhibit (handing.) A. Yes, sir.

Q. What is it?

A. A bid from the United Engineering Works.

Q. On those specifications.

A. On those specifications.

Mr. FRANK.—Q. On what specifications?

A. A set of specifications furnished them.

Mr. FRANK.—They are not identified yet.

Mr. McCLANAHAN.—I show you "Respondent Matson Exhibit 7" and ask you if you can identify that? A. Yes, sir. [1527—1439]

Q. What is that?

(Testimony of Charles W. Saunders.)

A. A bid from the Risdon Iron & Locomotive Works.

Q. For what?

A. For the work on the steamer "Hilonian" in accordance with our specifications.

Q. I show you "Respondent Matson Exhibit 5" and ask you if you can identify that (handing).

A. Yes, sir.

Q. What is it?

A. A bid from the Union Iron Works to do the work on the "Hilonian" as per our specifications.

Q. And by your specifications what do you mean? The ones that have been shown you as "Siverson A" or the one that you have identified as your own, No. 1?

A. I am very sure they were all furnished with both of these specifications.

Q. Under the first tender? A. Yes, sir.

Q. What was the object of furnishing them with both sets of specifications?

A. The change in dates for the examination of the ship, and the opening of the bids.

Q. Were they furnished together or at separate times?

A. They were furnished with these first, with our exhibit first.

Q. With "Exhibit No. 1" first or "Siverson A"?

A. I will change that, the "Siverson A" first.

Q. When were they furnished with your "Exhibit No. 1," subsequently or prior? A. Subsequently.

Q. Can you state whether or no they had both

(Testimony of Charles W. Saunders.)

sets of specifications in their possession before the bids were made which you have identified.

A. Yes, sir, they all had both sets.

Q. Were those bids or either of them accepted?

A. None of them were accepted.

Q. Do you remember, Captain Saunders, when these bids were opened? [1528—1440]

A. I don't remember the exact date, but I know they were opened in the time specified in the second bid. I will change that. They were opened at the time specified in this second specification.

Q. That is yours, No. 1? A. Ours, No. 1.

Q. Were you present at the time they were opened? A. Yes, sir.

Q. Where were they opened?

A. In the main office of the Matson Navigation Company, 268 Market Street.

Q. Who else besides yourself were present?

A. Captain Matson, Mr. Gray of the United, I think it was Mr. Barnes of the Union and a representative from the Risdon.

Q. Do you remember his name?

A. I don't recollect. I had never met him before.

Q. You did not know him? A. No, sir.

Q. At that time did you have a talk or did you hear a conversation with Mr. Gray, with reference to this work? A. Yes, sir.

Q. Will you please repeat the conversation?

A. I cannot give the exact words, but Captain Matson told Gray that his bid was too high.

Q. Let me interrupt you there; were the repre-

(Testimony of Charles W. Saunders.)

sentatives of the Union or the Risdon, or either of them, present at that time?

A. They had both left. Mr. Gray had stayed.

Q. Now, please proceed with your recollection of the conversation.

A. The Captain had told Mr. Gray that the bids were too high and that he was going to call for more bids. Mr. Gray said that the uncertainty about the crank-shaft having to come out was his explanation of the bid being as much as it was. He suggested to the Captain that if he thought the bid was excessive it might be advisable to put a timekeeper on to check up the work. I don't think there was any more conversation; [1529—1441] I don't remember any.

Q. Do you remember whether he suggested any timekeeper at that time or not?

A. I think he did; he mentioned several names.

Q. Can you remember any of them?

A. I only remember one.

Q. What name was that?

A. That was Mr. Putzar.

Q. You spoke of Mr. Gray referring to the uncertainty about the removal of the crank-shaft. What do you know about that matter of uncertainty, if anything?

A. The Chief Engineer of the ship, Mr. Klitgaard, was certain that that would not need to come out. Mr. Gray thought it would. He had done considerable work on the "Hilonian" before and thought that that would be necessary.

(Testimony of Charles W. Saunders.)

Q. Did you hear him express that thought?

A. Yes, sir, I heard him say that.

Q. Was that before or after the bid of the United Engineering Works on July 27th?

A. I had heard that several months before.

Q. Had you discussed that matter with any other than Mr. Gray of the United Engineering Works?

A. I had talked to Mr. Christy about it.

Q. Did Mr. Christy ever make any investigation of that matter to your knowledge?

A. He went aboard the ship with me one time.

Q. When was that?

A. When the ship arrived from Honolulu in the latter part of June.

Q. What did he go aboard the ship for?

A. I had to go aboard to bring the ship up from quarantine. Captain Johnson [1530—1442] had got injured in Honolulu, and the mate was bringing her up from Honolulu—had a temporary license. I was going aboard to dock the ship and Mr. Christy went with me to see how the engines worked and try and form an opinion about the crank-shaft and machinery in general.

Q. Did you accompany him to the engine-room on that occasion? A. No, sir.

Q. Who was in charge of the engine-room on that occasion? A. Mr. Klitgaard.

Q. Who was his first assistant?

A. Mr. Kinsman.

Q. Did Mr. Christy make any statement to you relative to the examination which he had made of

(Testimony of Charles W. Saunders.)

the working of the engines at that time?

A. Yes, sir. After the ship had got under way, and I think after we got alongside of the dock I saw him and asked him how it looked down there. He said he thought everything looked very well; everything was working nicely.

Q. Was that all the conversation?

A. That is all of that conversation.

Q. Do you know, Captain Saunders, whether after the rejection of these first bids other bids were called for?

A. Yes, sir.

Q. Were any received?

A. We received one—we received two.

Q. Who were they from?

A. We received one from the Union and one from the United.

Q. I ask you to examine Respondent Christy Exhibit “B” and see if you can identify it. (Handing.)

A. That is the second bid from the United Engineering Works.

Q. I ask you to examine “Respondent Matson Exhibit 6” and ask you if you can identify that.

A. That is the bid from the Union Iron Works. The Union Iron Works made no change in their first bid. [1531—1443]

Q. After the receipt of these two bids from the United Engineering Works and the Union Iron Works respectively, did you have any conversation or overhear any conversation with any representative of the United Engineering Works with refer-

(Testimony of Charles W. Saunders.)

ence to their second bid?

A. I had several conversations with Mr. Gray.

Q. Do you know whether Mr. Gray had any conversation with reference to their second bid, with Captain Matson?

A. He had a conversation at the time he accepted the bid.

Q. When who accepted the bid?

A. When Captain Matson accepted the bid.

Q. When was that?

A. That was after the arrival of the steamer in August—about the 18th of August, 1909.

Q. Where was that conversation?

A. In Captain Matson's private office.

Q. Who was present?

A. Captain Matson, Mr. Gray and myself.

Q. Do you know how Mr. Gray happened to be there?

A. Captain Matson told me to telephone to him.

Q. Did you do so? A. Yes, sir.

Q. And it was in response to this telephone message that he came? A. Yes, sir.

Q. Will you please now state what was the conversation that took place at that time.

A. When Mr. Gray came in the Captain said, "Well, Gray, I have decided to give you the job although I still think the bid is too high, but I want an understanding with you that if the crank-shaft does not have to come out of the ship we will get an allowance from the bid. I am going to put on a timekeeper, as you suggested, for the purpose of

(Testimony of Charles W. Saunders.)

getting that reduction.” That is about all of the conversation, except that Mr. Gray said, “Thank you.” I think that is about all. [1532—1444]

Q. Was there any suggestion as to what that deduction would be, in that conversation?

A. Either at that conversation or at some previous one, or at the previous one with Captain Matson when the first bids were rejected, Mr. Gray figured about \$2,000 would be the cost of removing that crank-shaft.

Q. After that conversation which you have just related, did you between that time and the time that the “Hilonian” was sent to the yard of the United Engineering Works, have any conversation with Mr. Gray? A. Several.

Q. With reference to what?

A. The time that she was to be at the yard.

Q. Who had charge of the matter of that time?

A. I was in charge of that. It depended on how soon we could get rid of the cargo entirely.

Q. How does it happen that in your specifications which I have marked your “Exhibit No. 1,” the time is there explicitly stated to be August 23d as the date from which the time limit on the bid is to run?

A. That is the time that we figured we could have her at their yard, for the work to begin.

Q. Prior to the ship going to the yard had Mr. Gray been informed by you of when she would be put there? A. Yes, sir.

Q. And what was that date?

A. August 23d.

(Testimony of Charles W. Saunders.)

Q. I call your attention to another matter, Captain. You have said that there was no reduction in the bids of the Union Iron Works. Will you please again examine the two respective bids of that company and see if that is exactly correct (handing)?

A. I was mistaken, I guess. There was no material deduction I should have said.

Q. I call your attention, Captain Saunders, to Respondent Christy Exhibit "B" and ask you if that is your writing in pencil there. (Handing.) [1533—1445]

A. It is not my writing.

Q. Will you please read that pencil memorandum. Does that, Captain, refresh your memory as to any matter that arose in the conversation between Mr. Gray and Captain Matson, that you have just last related?

Mr. FRANK.—How should that refresh his memory when it is not his writing, and apparently he does not know whether the statement contained there is true or false? How can he? There is no evidence of that statement being either true or false.

Mr. McCLANAHAN.—There again, Mr. Frank, I will have to differ with you as to the ability of a man to refresh his memory. I contend he can refresh his memory from seeing anything or hearing anything perhaps. It does not have to be in his handwriting in order to refresh his memory.

Mr. FRANK.—It has to have some definite relation to the case. You are offering him a piece of

(Testimony of Charles W. Saunders.)

paper that is not in evidence. There is no proof that it was put on there by anyone who knew anything about it or had anything to do with this case whatsoever. According to your theory you can make up any sort of a writing, put it under the witness' nose and ask him if that refreshes his memory.

Mr. McCLANAHAN.—That is right.

A. That written statement there was made to me personally by Mr. Gray.

Q. That is, the substance of it.

A. The substance of that statement.

Q. Where was this made—this statement?

A. That was made—I could not tell you the exact place, but it was made directly after the second bill was submitted.

Q. Was it made before it was accepted? [1534—1446]

A. It was made before it was accepted.

Q. As a matter of fact, I understand that the “Hilonian” was sent to the yards of the United Engineering Works on August 23d. Why was she sent there?

A. To have this work performed.

Q. What work do you refer to?

A. That work called for in the specifications.

Q. Do you know what time she arrived at the works of the United Engineering Works?

A. About 9 A. M. on the 23d.

Q. Do you know what day of the week the 23d was?

A. Monday.

Q. Were you there at the time of her arrival?

A. Yes, sir.

(Testimony of Charles W. Saunders.)

Q. State whether or not any preparations had been made to receive the "Hilonian" at the yards of the United Engineering Works on Monday morning, August 23d, 1909.

A. They had the berth ready and were waiting for her.

Q. Do you know after her arrival how soon work was commenced? A. Immediately.

Q. In what way?

A. The stripping of the engine.

Q. Had any work under these specifications been commenced by the United Engineering Works prior to the "Hilonian's" arrival at the yards?

A. Yes, sir, they commenced work that morning before she left our wharf.

Q. Do you know that? A. I know that.

Q. What was the character of the work that they commenced?

A. Stripping railings and so forth; any parts that they could get adrift to facilitate the work.

Q. Where did the workmen from the United Engineering Works board the "Hilonian" prior to the "Hilonian" proceeding to the yard of the United Engineering Works? [1535—1447]

A. At our wharf at that time.

Q. What wharf was that?

A. Pier No. 10, Howard Street.

Q. Did you Captain Saunders, have anything to do with the actual engagement of Mr. Putzar as a timekeeper? A. Nothing.

Q. Did you know Mr. Putzar at the time of the

(Testimony of Charles W. Saunders.)

suggestion of his name as a timekeeper?

A. Nothing at all.

Q. Had you ever seen him?

A. I never saw him.

Q. How long were you at the yards of the United Engineering Works on August 23d, 1909?

A. I spent about an hour and a half or two hours there in the morning and then came back there that afternoon.

Q. What time in the afternoon?

A. About half-past 4 or 5 o'clock.

Q. How long did you stay there then?

A. About 15 or 20 minutes probably.

Q. Was Mr. Putzar there when you were there in the morning?

A. He was not there at all that day.

Q. Not at all that day? A. Not at all that day.

Q. Do you know when Mr. Putzar first reported for duty as timekeeper?

A. The next day; the next morning.

Q. August 24th? A. August 24th.

Q. Were you there at that time?

A. I was not there when he came. I came there early in the morning and left for the city.

Q. When you were there early in the morning he had not reported? A. He had not reported then.

Q. When did you first meet Mr. Putzar?

A. That afternoon; the afternoon of Tuesday.

Q. August 24th? A. August 24th.

Q. Do you know when he first assumed his duties as timekeeper?

(Testimony of Charles W. Saunders.)

A. Mr. Klitgaard told me that he got there—
[1536—1448]

Mr. FRANK.—I object to what Mr. Klitgaard told him.

Mr. McCLANAHAN.—That is hearsay evidence. Do not put that in.

A. (Continuing.) He reported sometime that morning after I left.

Mr. FRANK.—I do not care what—

Mr. McCLANAHAN.—Do not be nervous, Mr. Frank. He is not saying he heard that from Mr. Klitgaard.

Mr. FRANK.—He evidently did not know it except what he heard from Mr. Klitgaard.

Mr. McCLANAHAN.—Let us have the answer and then you can move to have it stricken out. I will consent to it.

Q. What were you going to say, Captain?

A. He reported that morning after I left.

Mr. FRANK.—I move to strike that out. It must be hearsay.

The WITNESS.—He was there when I arrived in the afternoon.

Mr. McCLANAHAN.—Q. What time did you arrive in the afternoon?

A. Between 4 and 5 o'clock.

Q. During the progress of the work on the "Hilsonian" at this time who was in charge of the mechanical end of it for the Matson Navigation Company? A. Mr. Klitgaard.

Q. And he was the Chief Engineer?

(Testimony of Charles W. Saunders.)

A. Yes, sir.

Q. How often were you, during the progress of the work, at the "Hilonian"?

A. Usually twice a day.

Q. During the whole of the period?

A. At some periods when we had another steamer in I was absent once or twice, for several days at a time.

Q. That is, there would be several days when you would not go over there at all? A. Yes, sir.

Q. How often did that occur?

A. Not more than twice. [1537—1449]

Q. During the entire period of the repair work?

A. Yes, sir.

Q. What was your business over there, Captain?

A. In case anything came up, anything new, I was to consult with Captain Matson, carry word from Klitgaard to Captain Matson and keep him informed of the progress.

Q. You were then an intermediary between Captain Matson and Mr. Klitgaard? A. Yes, sir.

Q. During the progress of the work did you at times see Mr. Putzar? A. Frequently.

Q. Do you know what he was doing at the time that you saw him?

A. Sometimes he was around the ship; other times writing up his time.

Q. Did you have any supervision over Mr. Putzar?

A. None.

Q. Was it part of your duty to report to Captain Matson about Mr. Putzar's work?

(Testimony of Charles W. Saunders.)

A. Not about the time.

Q. You say that you at times saw Mr. Putzar writing up his time? A. Yes, sir.

Q. Where was this?

A. That was in the main office building there. I think Mr. Williamson's office.

Q. The main office building of the United Engineering Works?

A. The main office building of the United Engineering Works in Alameda.

Q. Can you describe the location of Mr. Williamson's office where Mr. Putzar was writing up the time in reference to the other offices of the United Engineering Works?

A. His office was the first to the right on entering from the yard; the entrance where the men passed through on their way to work.

Q. What office was next to Mr. Williamson's?

A. I believe there was a vacant office there next, and then Mr. Christy's office. I think that was it.
[1538—1450]

Q. On the same side of the hallway?

A. On the right hand.

Q. What was opposite?

A. Opposite was the timekeeper's office.

Q. Did you see Mr. Putzar working on his time on more than one occasion?

A. On several occasions.

Q. What did you see?

A. Writing in the timekeeper's book is all that I recollect.

(Testimony of Charles W. Saunders.)

Q. I show you "Libelant Curtis Exhibit No. 4" and ask you if you can identify that book (handing)?

A. I believe that was the book.

Q. You believe that was the book he was writing in? A. Yes, sir.

Q. Can you remember, now, any other papers or documents, books or other matters, that were used by Mr. Putzar at such times?

A. I don't recollect any other.

Q. How do you know that he was writing up his time?

A. The first time that I went in there I asked him what he was doing.

Q. What did he say? A. Writing up the time.

Q. Had you ever given any instructions to Mr. Putzar as to how he should write up his time?

A. Never. I knew nothing about it.

Q. After the completion of the repairs on the "Hilonian," Captain Saunders, did you ever have any conversation with Mr. Putzar about his time?

A. I don't recollect of any except that Captain Matson wanted a report of the time.

Q. Did you speak to Mr. Putzar about that?

A. Yes, sir.

Q. What was said?

A. He said he would get it in as soon as possible.

Q. When did the "Hilonian" sail after the repair work had been completed? A. September 25th.

Q. Where did she sail for? A. Honolulu.
[1539—1451]

Q. Prior to her sailing had Mr. Putzar rendered

(Testimony of Charles W. Saunders.)

his report on the time? A. No, sir.

Q. He did finally render a report, did he not, or do you know?

A. He never rendered one on the time, that I know of.

Q. After the "Hilonian" had sailed when was it first that you next saw this time-book, "Curtis Exhibit 4"? A. I think it was about two months.

Q. Where did you get it? A. From Mr. Putzar.

Q. Was that the first time that that time-book came into the hands of the Matson Navigation Company? A. Yes, sir.

Q. And at that time Mr. Putzar had or had not made any report on his time? A. None.

Q. Mr. Putzar went out with the "Hilonian" as Chief Engineer, did he not? A. Yes, sir.

Q. Who appointed him to that position?

A. I appointed him.

Q. When was that?

A. That was probably a week before she went out.

Q. Under what authority were you acting then?

A. Under Captain Matson's authority.

Q. I understand Mr. Klitgaard had resigned?

A. He had resigned.

Q. Do you know whether Mr. Klitgaard had charge of the mechanical end of the repair work during the whole of the period of the repairs?

A. During the whole of the period while at the works.

Q. Do you know when the "Hilonian" left the works of the United Engineering Works?

(Testimony of Charles W. Saunders.)

A. I think on the morning of the 22d of September.

Q. Do you know when the "Hilonian" was docked on the Marine railway of the United Engineering Works? A. September 10, 1909. [1540—1452]

Q. Do you know the hour? A. One o'clock.

Q. Were you there at that time?

A. Not at that time.

Q. When were you there?

A. I arrived there between 4 and 5 o'clock P. M.

Q. Was anyone with you upon your arrival?

A. Mr. Klitgaard was there.

Q. Was anyone with you? A. No one with me.

Q. Do you know a man named Steward, a surveyor for Lloyd's? A. Yes, sir.

Q. Was Mr. Stewart there at that time?

A. Not that afternoon; he came with me the next morning.

Q. Any representative of the United Engineering Works on the "Hilonian" at the time of your arrival on the afternoon of September 10th when she was on the Marine railway?

A. I think Mr. Williamson and Mr. Merryman.

Q. Who was Mr. Williamson?

A. He was the superintendent of the yard.

Q. And who was Mr. Merryman?

A. I think he was the boss rigger.

Q. Do you remember seeing Mr. Christy there?

A. I do not remember seeing him there that night.

Q. Do you remember of any matter of discussion that took place that afternoon at which were present these two gentlemen, or either of them?

(Testimony of Charles W. Saunders.)

A. The discussion of the rudder was the important thing that afternoon.

Q. It was discussed, was it?

A. It was discovered when she went on the dock and it was discussed on my arrival there.

Q. What was the general nature of the discussion?

A. As to the work to be done on her. She was found in bad condition. [1541—1453]

Q. Was there ever any time when the matter of doing that work was in abeyance? A. No.

Q. What was the discussion, then?

A. As to the replacement of pintles and boring the gudgeons.

Q. That is, the discussion was as to what was to be done? A. Yes, what was to be done.

Q. Do you know, Captain Saunders, whether any work was actually commenced on the 10th of September on the gudgeon work? A. Not on the 10th.

Q. When was the work actually commenced?

A. The next morning, on the morning of the 11th.

Q. State whether or not the work on the gudgeons was under way at the time of your arrival next morning.

A. No. I arrived before they started work next morning.

Q. What time did you arrive?

A. Between 7 and 20 minutes past 7. I was usually there in the morning before they started work.

Q. What time did the work commence on the gudgeons?

A. It was 20 minutes past 7 when they started,

(Testimony of Charles W. Saunders.)

when they prepared for it.

Q. So that the work then was commenced immediately upon the resumption of work on the morning of September 11th? A. Yes, sir.

Q. Do you know whether that work once commenced was continued without interruption, or not?

A. There was no interruption that I know of.

Q. You say Mr. Stewart was with you on the ship the next morning, that is, September 11th?

A. On the morning of the 11th; on account of that work I went to the city for Mr. Stewart.

Q. What did you want Mr. Stewart there for?
[1542—1454]

A. Because he is a Lloyd's Surveyor, and the vessel was classed in Lloyd's.

Q. You have stated, I believe, that you acted as an intermediary between Klitgaard and Captain Matson. Do you know whether Captain Matson was here in San Francisco, or in this jurisdiction, during the whole of the time of the repair work?

A. Not for the whole of the time.

Q. Who represented him while he was away, in this particular matter?

A. Mr. Klitgaard was in charge of the work at that time.

Q. You said that as a part of your duty you reported changes; what changes do you refer to?

A. There were several changes came up.

Q. Changes in what?

A. Some of the work was not found necessary.

Q. Some of what work?

(Testimony of Charles W. Saunders.)

A. Some of the work in the main specifications was not found necessary.

Q. And there were changes made in the main specifications?

A. There were some changes made in the main specifications.

Q. Those are the changes you reported to Captain Matson? A. Yes, sir.

Q. What changes did you report to Captain Matson?

A. The first thing I reported was that the crank-shaft did not have to come out. The next, I think, was a balance-cylinder that they put in in place of a piston that was called for.

Q. Can you examine the specifications and tell exactly what the balance-cylinder was in place of?

A. Yes.

Q. Please do so.

A. In place of item 2 of the specifications.

Q. You are now looking at your "Exhibit No. 1"?

A. Yes, sir. [1543—1455]

Q. Were you present when that change was agreed upon?

A. Not at the first. I was present when it was finally agreed upon.

Q. Who were present at that time?

A. Mr. Klitgaard, Mr. Williamson and myself, and possibly some others.

Q. Do you remember, now, the gist of the conversation?

A. Mr. Klitgaard explained to me that the work

(Testimony of Charles W. Saunders.)

as called for in the specifications did not need to be done—

Mr. FRANK.—I object to what Mr. Klitgaard explained to this witness.

Mr. McCLANAHAN.—Q. Was Mr. Williamson there at the time? A. He was.

Q. Go on.

A. (Continuing.) And that the United Engineering Works, through Mr. Williamson, had agreed to put what he called the balance-cylinder on as compensation for not performing this item 2 of the specifications.

Q. Was the question of debit or credit to either party mentioned?

A. There was to be no debit or credit; it was considered an equal exchange.

Q. Did Mr. Williamson make any statement at that time of approval or disapproval?

A. He thought that that would be the proper thing to do with the cylinder.

Q. Was it agreed, or not, at that time, to make the compensation?

Mr. FRANK.—That is a conclusion. He can testify to what was said by each party. Whether it was agreed upon, or not, is a legal conclusion which the Court will draw.

A. I reported that to Captain Matson and he said that it would be all right if Mr. Klitgaard approved. I so reported [1544—1456] to Mr. Klitgaard, that he was to do as he considered best in that respect.

Q. What was the next change in the original spec-

(Testimony of Charles W. Saunders.)

ifications that came to your knowledge and you reported to Captain Matson?

A. The next that I remember was the substitution of a patch for a column.

Q. Will you refer to your "Exhibit No. 1" and tell us what specification number that column comes under? A. Item 7.

Q. Do you know anything about that change?

A. Yes. There had been a good deal of talk about that change.

Q. Talk between whom?

A. There had been a good deal of comment at the yard. Mr. Gray and Mr. Williamson thought that that iron column called for was not a suitable arrangement and suggested a patch, which was finally agreed on, as being the best thing. I told Captain Matson about that, and he said that if Mr. Klitgaard advised that it would be all right.

Q. Did you know whether the patch was substituted for the column called for by item 7?

A. The patch was substituted.

Q. Do you know anything about any money compensation, a debit or a credit on that proposition?

A. There was to be no compensation, unless the weight of the patch exceeded a certain amount, about 900 lbs.

Q. And in case it did exceed the weight suggested, what was the understanding?

A. The ship was to pay for the extra weight.

Q. Do you remember reporting any other changes in the work to Captain Matson?

(Testimony of Charles W. Saunders.)

A. I think that was the last change before the Captain went east.

Q. Do you know of any changes subsequent to the one just suggested?

A. There was one change, where the work [1545—1457] called for on the windlass was not done, and there were two stanchions substituted under the forecastle-head deck.

Q. Was that done with your approval?

A. Yes. Mr. Klitgaard recommended it.

Q. Do you know anything about the negotiations which led up to that change?

A. I was there when Mr. Williamson and Mr. Klitgaard, and I think Captain Johnson was there also when that was discussed. It was on Captain Johnson's recommendation that the capstan was connected with the windlass. It was unimportant, and we decided not to have that work done, but to exchange for the two stanchions under the forecastle-head.

Q. Who was present at the time of that negotiation?

A. Mr. Williamson, Mr. Klitgaard, Captain Johnson, formerly the master of the "Hilonian," and myself.

Q. During the repairs on the "Hilonian," do you know whether the rollers or the chain-leads for the quadrant were raised, or not?

A. The rollers for the chain-leads were not raised.

Q. Captain, do you know about any credits that were allowed the Matson Navigation Company by the United Engineering Works, arising out of this repair

(Testimony of Charles W. Saunders.)

job? A. Yes.

Q. I show you a couple of sheets of paper and ask you if you can identify them (handing).

A. This was for scrap-brass, 3,166 lbs.

Q. You can identify them, can you?

A. Yes, sir.

Q. What are they?

A. This was for scrap-brass.

Q. They are credit memorandums, are they?

A. Yes.

Mr. McCLANAHAN.—We offer in evidence the credit memorandums identified by the witness, dated November 1 and November 20, 1909, respectively, and being in the sum of \$284.94, and [1546—1458] \$235.07, respectively, and ask that they be marked as a collective exhibit “Respondent Saunders No. 2.”

(The document is here marked “Respondent Saunders Exhibit No. 2.”)

Mr. FRANK.—That is already admitted, Mr. McClanahan; it is in the pleadings; you are given credit for it. So that that evidence is immaterial. That credit is given to you in the libel.

Mr. McCLANAHAN.—Q. Captain, do you remember the date when the “Hilonian” sailed from this port in January, 1910?

A. About the middle of January.

Q. Can you not remember the exact date?

A. Not the exact date.

Q. Can you ascertain that for me?

A. I can find out easily.

Q. Captain Saunders, did Chief Engineer Klit-

(Testimony of Charles W. Saunders.)

gaard make a report on this repair work?

A. Yes, sir.

Q. How long after the completion of the work was the report made?

A. Inside of a week, I should say, after the completion of the repairs.

Q. Who received the report? A. I did.

Q. Did you ever show that report to Captain Matson? A. I never did.

Q. Did he know of it?

A. I told him I had a report from Klitgaard, but he never saw it.

Mr. McCLANAHAN.—Mr. Frank, I would be glad to introduce that report if I had it. We have made search for it everywhere, even up to this morning, and cannot find it. I understand that you have a copy, or your client was furnished with a copy at the time Mr. Klitgaard delivered the report to Captain [1547—1459] Saunders, or soon after, and if that information is correct I would be very glad to have you produce the report and I will offer it in evidence.

Mr. FRANK.—How do you understand that?

Mr. McCLANAHAN.—Well, that is not essential. The fact is, as we understand it, that you have a copy. If you have, we will be glad to introduce it; if you have not a copy, then my information is incorrect and I am unable to produce one.

Mr. FRANK.—It seems to me you have lost a great many of your records that are material in this case.

Mr. McCLANAHAN.—And it seems to me that the

(Testimony of Charles W. Saunders.)

United Engineering Works have lost a great many of their records that are material in this case.

Mr. FRANK.—No, sir; we have not lost anything that we are in the habit of keeping. You have lost things that you are in the habit of keeping.

Mr. McCLANAHAN.—I will say, Mr. Frank, that that report was—from the evidence which we have—no, I will withdraw that. There is a dispute as to whether that report was turned over to me, or not. I do not remember that it ever was. I have searched everywhere for it and cannot find it. And search has been made in the office of the Matson Navigation Company for it.

Q. Captain Saunders, do you know of the making and installation of a circulating-pump by the United Engineering Works on the “Hilonian”?

A. Yes, sir.

Q. Was that or was it not a contract job?

A. That was a contract job.

Q. Will you please look at this sheet of paper and see if you can identify that as connected with the circulating-pump contract [1548—1460] (handing)?

A. That is evidently a copy of the original.

Q. Do you so recognize it? A. Yes, sir.

Mr. McCLANAHAN.—We offer in evidence the paper identified by the witness, dated January 18th, 1909, addressed to the Matson Navigation Company and signed “United Engineering Works per H. P. Gray, Secretary,” and ask that it be marked “Respondent Saunders Exhibit No. 3.”

(Testimony of Charles W. Saunders.)

(The document is marked "Respondent Saunders Exhibit No. 3.")

Mr. FRANK.—Q. You say, Mr. Saunders, it is evidently a copy; you arrive at that conclusion simply because you see on the paper that was shown you the word "Copy"? A. No.

Q. Have you any independent recollection of the terms of that?

A. I have a very strong recollection of the terms.

Q. Well, what were the terms as you recollect them?

A. We proposed to furnish and install a circulating-pump. I have not read that thing for a long while, Mr. Frank. I simply looked it over. It is about the same as the original, as I remember it.

Q. You have no present recollection of the terms of the original, have you?

A. I could not give you the terms.

Q. If you have, Captain, give it to us, give us what you recollect, whether it is the same as this or otherwise. We are simply asking for your recollection.

A. I recollect that the original bid called for the furnishing and installation of a circulating-pump, for the sum of \$1,350, and I recollect that that work was to be done without interfering with the movement of the ship.

Q. Is that all you recollect about the terms?

A. I recollect that there was another offer for another pump, [1549—1461] but I took no interest in it because that pump was not accepted.

Mr. McCLANAHAN.—Mr. Frank, if that is not a

(Testimony of Charles W. Saunders.)

correct copy of the bid, it is in your possession and power to disprove it.

Mr. FRANK.—I am asking the witness now, because he has identified it, and before you offer it in evidence I want to show on what basis he has identified it.

Q. Is that all the recollection you have of it?

A. Yes.

Q. And is this the only paper that was connected with that contract?

A. I do not remember that that contract was ever accepted in writing. I believe it was a verbal acceptance.

Q. But you do not know; you are simply believing it now?

A. I know the bid was accepted, but I do not know whether it was in writing or verbal.

Q. How do you know it was accepted?

A. Because Captain Matson told me he accepted it.

Mr. FRANK.—I object to the introduction of the document in evidence. The witness is evidently simply following the suggestion—

The WITNESS.—I am not following any suggestions, Mr. Frank.

Mr. FRANK.—One moment, Captain, I am talking now. I say he is evidently following the suggestion contained in that instrument in identifying it; and I object to it on the further ground that it is immaterial to any of the issues in this cause.

Mr. McCLANAHAN.—Q. Do you know that that circulating-pump was made and installed by the

1790 *Matson Navigation Company vs.*

(Testimony of Charles W. Saunders.)

United Engineering Works? A. Yes.

Mr. FRANK.—This is all subject to the objection that it is immaterial, this whole line of examination.

[1550—1462]

Mr. McCLANAHAN.—Q. Do you know whether or not the contract price was paid for the work by the Matson Navigation Company?

A. I believe it was.

Mr. McCLANAHAN.—I think that is all, Mr. Frank.

Mr. FRANK.—It is now just about 4 minutes to 12. I suppose we might as well take a recess before taking up the cross-examination.

(A recess was here taken until 2 P. M.) [1551—1463]

AFTERNOON SESSION.

Mr. McCLANAHAN.—With your permission, Mr. Frank, I will put Mr. Stewart on the stand. It will only be for a moment.

[**Testimony of William H. Stewart, for Respondent.**]

WILLIAM H. STEWART, called for the respondent, sworn.

Mr. McCLANAHAN.—Q. Mr. Stewart, do you remember the occasion of a visit made to the steamship "Hilonian" in September, 1909, with Captain Saunders? A. Yes, sir.

Q. What was that day? A. On September 11th.

Q. Did you at that time make any notes with reference to the object of your visit? A. Yes, sir.

Q. What was the object of your visit?

(Testimony of William H. Stewart.)

A. The object was to examine the steamer "Hilonian" on the Marine railway at the United Engineering Works and make an examination of the tail-shaft at the same time.

Q. Have you that memorandum that you made at the time with you? A. Yes, sir. (Producing.)

Q. From an examination of the memorandum, is your memory refreshed with reference to whether or no there was any work being done at that time on the gudgeons of the "Hilonian"? A. Yes, sir.

Q. Was there any such work being done?

A. Yes, sir, there was work being gone on with on the rudder.

Q. And when did you arrive there?

A. I don't know what time of the day it was. I could not say whether it was morning or afternoon. I rather think it was after lunch.

Q. You went there with Captain Saunders, did you? A. Yes, sir.

Q. But you can testify there was work going on while you were there on the gudgeons?

A. Yes, sir.

Mr. McCLANAHAN.—That is all. [1552—1464]

Cross-examination.

Mr. FRANK.—Q. What is the memorandum that you have there, Mr. Stewart? A. Shall I read it?

Q. Can I look at it? A. Oh, yes (handing).

Q. When you went there, Mr. Stewart, what was being done?

A. Well, the tail-shaft had been drawn; the propeller had been removed and the tail-shaft drawn in-

(Testimony of William H. Stewart.)

board for examination. I examined the tail-shaft and passed it as being in good order. I examined the rudder and at that time the rudder had been raised up.

Q. That is, set up on blocks?

A. Yes, sir, jacked with pintles clear of the gudgeons. I found the bushings in the gudgeons and also the pintles very badly worn, and agreed that it was necessary that the gudgeons should be bored out and bushings put in and new pintles put in.

Q. So at the time you were there then, they were not actually work in doing that specific thing, but they had simply jacked up the rudder for examination. Is that not true?

A. I am not prepared to say how far they had gone with the actual work, because I do not remember that exactly, but my notes simply state that the gudgeons were being rebushed and pintles renewed to their original size.

Q. That, of course, would be your conclusion as to what work was to be done when completed. You are not prepared to say that they were at work on that at the time you were there?

A. I could not say exactly as to that, how far they had progressed in it.

Q. As a matter of fact, they could not rebore the bushings, could they, with the rudder in that position?

A. The rudder was required to be moved out of the way somewhat to make room to rebore the gudgeons.

[1553—1465]

(Testimony of William H. Stewart.)

Q. Your principal purpose in going there was to examine the tail-shaft, did I understand you to say?

A. To examine the tail-shaft and the vessel generally on the dock—the outside of the vessel.

Q. How long did you remain?

A. I don't remember. Probably about an hour, or a little longer maybe.

Q. Did I understand you to say on your direct examination that it was agreed that the work should be done on the rudder pintles?

A. I believe I did say that.

Q. When you say "agreed," how did you mean?

A. I mean with the owner's representative, Captain Saunders.

Q. That is, you agreed with him?

A. I made certain recommendations and he agreed that these recommendations would be carried out.

Q. And that is what you mean when you used the word "agreed"? A. Yes, sir. [1554—1466]

[Testimony of Charles W. Saunders, for Respondent (Recalled).]

CHARLES W. SAUNDERS, recalled, direct examination resumed:

Mr. McCLANAHAN.—Q. Did you get the date of the sailing of the "Hilonian" from this port in January? A. January 12th.

Q. 1910? A. Yes, sir.

Q. There were a few questions I omitted this morning that I should like to ask you. Did Mr. Putzar take out the ship as Chief Engineer on that trip?

A. He did; yes.

(Testimony of Charles W. Saunders.)

Q. How many trips after that did he make?

A. I believe that was his last trip.

Q. Do you have any knowledge of the letting of what is called the smokestack contract?

A. Yes, sir.

Q. Were you present when it was let?

A. I was present when it was awarded.

Q. What was said at that time? First, who was present?

A. Mr. Gray, Captain Matson, Mr. Klitgaard and I think Mr. Williamson. I am not sure about him.

Q. What was said at that time?

A. There was considerable discussion as to the condition of the smokestack. Finally, Captain Matson asked Mr. Gray for a price.

Q. For what?

A. To remove, make and install a new smokestack. Mr. Gray made a price of \$900, which was accepted verbally at that time.

Q. Anything else said at that conversation?

A. They had an understanding then—

Mr. FRANK.—Tell the conversation. I object to the conclusion about it.

A. I will give you the gist of the conversation.

Mr. McCLANAHAN.—Q. You are not required to do more than [1555—1467] you can. If you can remember it word for word, that is the best evidence. If you cannot remember it word for word give the gist of it?

A. The gist of it was that the ship was not to be delayed over the specified time in the contract on ac-

(Testimony of Charles W. Saunders.)

count of the installation of the new smokestack.

Q. And what was that specified time?

A. 26 days; 25 days from the time of her arrival at the yards.

Q. What date was the smokestack contract let?

A. That was on the day before Captain Matson went East, on the 9th of September.

Q. Captain, were you present when there was a conversation with reference to the repairs to the tank-top? A. Yes, sir.

Q. Who was present at that conversation?

A. That was at the same time, and the same people present.

Q. What was the conversation with reference to the tank-top?

A. Mr. Gray had quoted a price for removing and replacing the tank-top.

Q. Was that in writing?

A. He had submitted a price in writing.

Q. I show you "Matson Exhibit No. 1" and ask you if you can identify that paper (handing)?

A. That is the bid.

Q. Is that your writing at the bottom "Rejected"?

A. It is not my writing.

Q. Now, proceed, please, with the conversation.

A. The tank-top came up for discussion, and Captain Matson said that Mr. Gray's bid he considered too high, but as the tank-top had to be renewed he would let them go ahead with it on a time and material job, but he wanted separate time kept for that particular work.

(Testimony of Charles W. Saunders.)

Q. Who was he talking to?

A. Mr. Gray. [1556—1468]

Q. Was there any reply to that?

A. Only that Mr. Gray would do so; he would see that separate time was kept.

Q. Was there anything said about the price?

A. The price was not to exceed \$1250.

Cross-examination.

Mr. FRANK.—Q. Captain, when you speak about a talk having taken place about the crank-shaft being out of shape, and the ship needed an overhauling, to whom do you refer as having taken part in that talk?

A. It was talked over a number of times between Mr. Klitgaard and Mr. Gray, and possibly others of the United Engineering Works that I don't recollect.

Q. Were you present?

A. I have been present at some of the conversations.

Q. How can you testify to a number of times as to conversations at which you were not present?

A. I was present when there were a number of conversations between them.

Q. What dates were those conversations?

A. I could not give you the dates.

Q. You have been giving dates here Mr. Saunders of all these other transactions without hesitancy and without any memorandum. How does it happen you can give those dates so readily and cannot give me any date now?

A. Very likely, if I should name the dates of every day that the steamer was in port or had been in port

(Testimony of Charles W. Saunders.)

for two or three trips previous to the contract being let I would strike it pretty squarely because it was a very frequent topic of conversation.

Q. We will come back to that, but answer the question now that I asked you. [1557—1469]

Mr. McCLANAHAN.—I submit that the question has been answered.

Mr. FRANK.—Read the question, Mr. Reporter.
(The Reporter reads the question.)

A. Some of the dates that I have given are in particular instances where contracts were awarded.

Q. Is that your full reply?

A. I think that is all.

Q. You have given dates and hour when you have gone over to the United Engineering Works. Have you been carrying those in your mind for two years or more?

A. Yes, sir. That was the first repair job of any importance that I had ever attended. It was my custom to go there to the yard in the morning from my home the first thing, and to go to the yard again on my way to my home in the evening.

Q. Is that the reason that you have been able to testify that Gray was informed on August 23d that the vessel would be at the yards?

Mr. McCLANAHAN.—I submit there is no such evidence in the record that Gray was informed on August 23d that the vessel would be at the yard.

Mr. FRANK.—Q. Go on and answer the question.

A. The date of August 23d had been considered ever since the contract was considered as being the

(Testimony of Charles W. Saunders.)

date that we could get her to the yards.

Q. Is that the reason that you are able to give the exact date and the time when you say Mr. Putzar reported for duty?

A. I know he reported for duty on the morning of the day after she went to the yard, and she went to the yard on the morning of August 23d.

Q. Is that the reason that you have been able to fix in the [1558—1470] same way without reference to any date September 22d as the day when she left the works?

A. I believe in my former answer I said “about September 22d.” I know she was away from the yards about two days before she sailed. She sailed on the 24th.

Q. How do you fix the 24th as her sailing date now after two years?

A. Well, I know that she was delayed for about two days after her regular sailing date.

Q. Does she sail on the 24th of every month? Is that her regular sailing date?

A. No, sir. She was sailing at that time every 28 days.

Q. How does that help you fix the date of her regular sailing date?

A. The sailing dates are frequently up for discussion with me in the course of the business.

Q. What was the sailing date of the “Enterprise” two years ago?

A. She was on an irregular schedule.

Q. An irregular schedule?

(Testimony of Charles W. Saunders.)

A. I don't recollect that date.

Q. Have you any other vessels that were then on regular schedule besides the "Hilonian"?

A. None, not at that time.

Q. Not at that time? A. No, sir.

Q. What was the sailing date of the "Wilhelmina" a year ago? A. A year ago this month?

Q. Any time when she sailed about a year ago. What are you doing now,—figuring back from her last sailing?

A. No, sir, I am not doing that. She sailed on her first voyage from here on February 10th, 1910.

Q. Do you remember any other voyage besides her first voyage?

A. I probably could if I gave it sufficient attention without figuring back. [1559—1471]

Q. Figuring back?

A. Without figuring back.

Q. What attention did you give to the dates of the "Hilonian" that enables you to fix them as you have done?

A. It was a very important detail at that time.

Q. You mean to tell us now, you have carried all these dates in your memory so that you are able to promptly answer up every date now without refreshing your memory on the subject?

A. The case of the "Hilonian" has had particular attention paid to it ever since. It has been in my mind a great deal, and those dates would naturally be of more importance than others.

Q. What date was she docked?

(Testimony of Charles W. Saunders.)

A. She was docked on September the 10th.

Q. When did that become an important item in your mind? At the time she docked?

A. It was very important from the time she went over there.

Q. From the time she went over there?

A. Yes, sir.

Q. And, have you carried that in your mind without refreshing your memory ever since?

A. It has been frequently called to my attention.

Q. By whom?

A. In the course of business at the office, and knowing this suit was being instituted.

Q. What was the course of the business at the office, that would bring this question of the docking of the "Hilonian" on September the 10th to your mind?

A. We have to dock those ships so often, and we figure from the previous time of docking when she will require docking on the next occasion.

Q. When was she docked on the next occasion?

A. She was docked at the Union Iron Works about September the 1st, 1910. [1560—1472]

Q. Does that figuring apply also to the hour of the day that she was docked? A. No, sir.

Q. How did you happen to be able to fix one o'clock as being the hour of the day when she was docked?

A. Because when I was there in the morning they were preparing to put her on the dock. When I returned in the afternoon she was on the dock just dry. Ordinarily it takes about two hours to get a vessel on the dock.

(Testimony of Charles W. Saunders.)

Q. Now, let me come back to the talk about the crank-shaft. Will you state any particular time you were present previous to the letting of this contract when Mr. Klitgaard and Mr. Gray talked over the question as to whether or not the crank-shaft should come out?

A. We talked it over, I think it was, the 22d of June, after the ship's arrival at the dock.

Q. Where were you then?

A. At the steamer "Hilonian" pier 10.

Q. How long after her arrival?

A. The same day.

Q. How long—what time of the day—how long after her arrival that day?

A. Probably within an hour after arrival at the dock.

Q. How was Mr. Gray brought to the dock?

A. He was on the dock I believe when the ship arrived there.

Q. You say you believe. Do you mean us to understand that you have recollection of it or that you are guessing at it?

A. Either when she arrived at the dock or shortly after she arrived.

Q. What brought him there?

A. Mr. Gray usually was on the dock when a steamer of ours got in, in case there was any work that required attention.

Q. What kind of work could he expect to be down there on the dock for? Does not the engineer keep his vessel up while on the [1561—1473] trip?

(Testimony of Charles W. Saunders.)

A. On every voyage, when a ship returns to port, there is more or less work that has to be attended to by the yards, the iron works ashore, which is impossible for them to fix up while the ship is at sea and under way.

Q. Then, on this occasion, you say you and Gray and Klitgaard were together on the occasion of this conversation?

A. I believe so, and I think Mr. Christy.

Q. Now, what was said by each of these parties at that time upon the subject?

A. Just the general conversation about the condition.

Q. About the condition of what?

A. Of the crank-shaft and the engine in general.

Q. In general. Now, which do you wish us to understand was the substance of the conversation, the engine in general or the crank-shaft in particular?

A. The crank-shaft would come under the engine in general.

Q. What did they say about the crank-shaft?

A. Well, I could not give you the exact words, but I could say that Mr. Kilgaard contended that it was not necessary to take out the crank-shaft. Mr. Gray was then apparently in doubt as was also Mr. Christy.

Q. That was, you say, on what date?

A. I believe the 22d of June.

Q. The 22d of June? A. Yes, sir.

Q. Did she go off on the voyage then without repairs?

(Testimony of Charles W. Saunders.)

A. She had minor repairs at that time.

Q. When did she return here?

A. She returned here in July.

Q. What date?

A. About the 27th of July, possibly earlier.

Q. Is that the date when you say that Mr. Christy went aboard the vessel with you at Quarantine?

A. On the June trip, about the 22d of June.
[1562—1474]

Q. On the June trip? A. Yes, sir.

Q. And not on the July trip?

A. Not on the July trip.

Q. And that is the occasion when you say Mr. Christy came out and told you that she was running nicely? A. That is the occasion.

Q. Then if she was running nicely, how did it happen that Mr. Christy was of the opinion that the crank-shaft should come out?

A. I believe he relied on Mr. Gray's opinion.

Q. That is all that you can say about it?

A. That is all.

Q. What causes you to believe that?

A. Mr. Gray was the one that was most active in the "Hilonian" work, paid more attention to it, was on the ship more.

Q. Had Mr. Gray gone out with Mr. Christy to examine the vessel as she was coming in?

A. No, sir.

Q. What was the purpose of Mr. Christy's going out there?

(Testimony of Charles W. Saunders.)

A. To examine the engine when the ship was under way.

Q. And you want us to understand that that is a more favorable condition to form a judgment, is it not?

Mr. McCLANAHAN.—I object to the question as calling for the conclusion of the witness.

Mr. FRANK.—Q. Go on and answer the question.

A. You can always judge a machine better when it is in motion.

Q. Under those conditions you think that though Mr. Christy had made this examination under more favorable conditions than Mr. Gray, he was referring to Mr. Gray's opinion; is that right?

A. That is the idea.

Q. When was there another occasion when that subject came up between you?

A. I could not give you any other date.

Q. Can you fix any other conversation by any other circumstance?

A. Not by any other circumstance, no. [1563—1475]

Q. Can you fix any other conversation in any other way that you know of?

A. No, sir, none other than what I have given you.

Q. So, then, this is the only one that you remember; is that right?

A. That is the only one that I remember the date of.

Q. It is the only one that you remember any circumstance whatsoever associated with it, is it not?

(Testimony of Charles W. Saunders.)

A. It is the only one where there is any particular circumstance associated with it.

Q. And you wish us to understand now, though you cannot remember any other fact connected with the conversation, that there were other similar conversations at which you were present?

A. There were.

Q. Can you give us any detail of those other, or any of other conversations?

A. No details other than that Mr. Klitgaard and Mr. Gray differed so much in their opinions.

Q. In what way?

A. Mr. Klitgaard believed that the crank-shaft would not need to come out. Mr. Gray believed it would.

Q. When was it that Mr. Klitgaard drew the specifications which you have testified to here?

A. He made the notes of the specifications during one of his voyages at sea.

Q. Which voyage?

A. The voyage probably in July.

Q. Why do you say probably?

A. Because the first time that I saw those notes was on his arrival here from the July trip.

Q. When did he draw them up finally?

A. I believe it was the day after his arrival in July.

Q. Did he draw them up in your presence?

A. He gave them to the stenographer in my presence.

Q. The stenographer where?

(Testimony of Charles W. Saunders.)

A. In our main office, 268 Market Street.

Q. Did he make any comment on them to you at that time? [1564—1476]

A. None that I remember.

Q. Did you talk that matter over with Captain Matson before those specifications were drawn up?

Mr. McCLANAHAN.—What matter?

Mr. FRANK.—The matter of the detail of the specifications.

A. I did not talk it over with him.

Q. Did Klitgaard talk to him in your presence?

A. Not in detail in my presence.

Q. Not in detail in your presence? A. No, sir.

Q. Did he talk with him about it subsequently in your presence, subsequently to drawing up the specifications? A. No, sir.

Q. Then he never talked to him in your presence about these repairs? A. Not in detail.

Q. What do you mean by not in detail?

A. He never went through the whole specifications in my presence with Captain Matson.

Q. What part of the specifications did he go through in your presence with Captain Matson?

A. The crank-shaft.

Q. That is the only thing?

A. That is the only thing in detail.

Q. What did he say at that time about the crank-shaft?

A. He said he hoped it would not need to come out. He hoped that Mr. Klitgaard was right.

Q. Who are you speaking of now as having said

(Testimony of Charles W. Saunders.)

that? A. Captain Matson.

Q. I am asking you what Klitgaard said.

A. Klitgaard said that he did not think it would have to come out; although Mr. Gray thought so, he did not think so.

Q. What did you understand to be meant by the crank-shaft having to come out?

A. That it would have to be removed from the ship to the shop for some defect. [1565—1477]

Q. What were the particular repairs that were contemplated at that time to the crank-shaft?

A. That I did not understand.

Q. Do you understand to-day?

A. I understand a little more to-day.

Q. So the entire conversation concerning this crank-shaft, whether between Mr. Gray and Mr. Klitgaard previous to the drawing of the specifications, or between Mr. Klitgaard and Captain Matson in your presence after the drawing of the specifications, had only to do with the simple question as to whether or not the crank-shaft was to be taken out of the ship for removal to the shop; is that right?

A. That is about all that was discussed with me while I was present.

Q. That is all at any of these conversations that you have been testifying to, is it?

Mr. McCLANAHAN.—I submit the witness has answered the question.

Mr. FRANK.—Then it will not hurt him to answer it again.

A. That is all I remember.

(Testimony of Charles W. Saunders.)

Q. Now, Captain, you were over there almost daily? A. Almost.

Q. When you went over there did you go down into the engine-room to see what work was being performed? A. Sometimes.

Q. When you say sometimes, did you do it sufficiently to keep yourself advised of what was going on?

A. I went down there every time until I knew that the crank-shaft did not need to be taken out.

Q. That was your only purpose in going down there?

A. That is all. Captain Matson was very anxious to know whether it was necessary to take it out or not.

Q. What did you see them do with the crank-shaft then, up to that time? A. They were stripping it.

Q. What do you mean by stripping it?

A. Taking off any connecting gear. [1566—1478]

Q. What else did they do with it?

A. I believe they raised it upon blocks.

Q. What else did they do?

A. The rest of the work I could not give in detail. They did some little work to it, I don't know just what.

Q. Did they not begin to remove the bulkhead?

A. Not at that time, no.

Q. Not at that time? A. No.

Q. When did they remove that bulkhead?

A. They cut a piece out of the bulkhead when they found it necessary to remove one piece of the inter-

(Testimony of Charles W. Saunders.)

mediate shafting.

Q. Did they not remove part of the bulkhead preparatory to taking the crank-shaft out?

A. They did not.

Q. They did not? A. No, sir.

Q. Would you wish to set up your recollection in that respect against that of the engineers who were at work upon it? A. Yes, sir.

Q. Did you speak to anybody concerning the necessity of taking out the crank-shaft during the progress of that work?

A. That was the main topic of conversation up to the time that it was found unnecessary.

Q. With whom did you talk on that subject?

A. With probably every one that was working on the job, that part of the job.

Q. Name somebody. That is too indefinite for any purpose in this case.

A. Mr. Williamson was the only one working there that I knew by name.

Q. Did you talk to him on that subject?

A. Frequently.

Q. What did you have to say to him and what did he have to say to you?

A. I asked whether it would be necessary to take it out several times; he said he would not be able to tell until they [1567—1479] saw it. I think they lined it up in some way and used calipers on it; some method that they have of determining the correctness of the shape.

Q. What would be the purpose of taking it out,

(Testimony of Charles W. Saunders.)

Captain Saunders?

Mr. McCLANAHAN.—I object to the question on the ground that the witness has not qualified as an engineer to answer the question.

Mr. FRANK.—He seems qualified on every subject.

The WITNESS.—Thank you.

Mr. McCLANAHAN.—I think he is holding his own.

A. That is work that I am not familiar with.

Mr. FRANK.—Q. Then you don't know as you were watching this work what the purpose would have been to take it out, and what purpose was subserved by not taking it out, do you? A. I do not.

Q. You don't know anything about it?

A. I don't know anything about the mechanical part of it.

Q. All you know about it is it was not taken out?

A. I know it was deemed not necessary to take it out by those familiar with the work, and Captain Matson wished to be informed of the decision as soon as possible. That was the reason for my great interest in it.

Q. And that is all you were interested in in the engine-room? A. At that particular time.

Q. At any other time was there anything else you were interested in in the engine-room?

A. I was interested in a general way in the way the work was progressing, and was very anxious to get the ship out on the specified date, so as to enable her to keep her schedule.

(Testimony of Charles W. Saunders.)

Q. Did you keep in touch with the changes that were being made? [1568—1480]

A. With some of the changes that I understood, yes.

Q. Not with all of the changes?

A. There were some that I was not familiar enough with in a mechanical way to consider.

Q. And that Captain Klitgaard took care of?

A. Mr. Klitgaard was the chief engineer.

Q. I mean Mr. Klitgaard, the chief engineer, took care of that?

A. He was the one who judged that work.

Q. And when any changes were made from the original specifications Mr. Klitgaard determined those changes; is that right?

A. Mr. Klitgaard recommended those changes.

Q. His recommendations were carried out, were they not? A. I believe they were.

Q. In every instance? A. I think so.

Q. Were you ever present during the discussion that arose over some of these changes in the engineer's department? A. Yes, sir.

Q. Now, who else took part in those discussions?

A. One discussion over the substitution of a balance cylinder in the place of work on the low pressure cylinder, Mr. Williamson, Mr. Klitgaard and myself were present at.

Q. Was Mr. Putzar present?

A. I don't recollect that Mr. Putzar was present.

Q. Was not Mr. Putzar present at most, if not nearly all, of the discussions with respect to changes

(Testimony of Charles W. Saunders.)

in the department?

A. That I could not say. He was around the job considerable.

Q. Not, only was he present but did he not advise upon the subject together with Mr. Klitgaard and yourself?

A. He sometimes talked about the changes.

Q. At those discussions, Captain Saunders, was not also Mr. Siversen, the foreman on the engineer's job, present taking part [1569—1481] in the discussion? A. I don't recollect Mr. Siversen.

Q. You would not undertake to say that he was not present taking part in it?

A. I would not say that he was not present.

Q. Were you present at the discussion held between Mr. Klitgaard and the representatives of the United Engineering Works whomsoever it may have been, respecting the removal of the crank-shaft where it was determined whether or not it should be removed? A. I was not present.

Q. So that you do not know what that discussion was? A. No, sir.

Q. And you don't know what determined them not to remove it?

A. When I arrived over there one evening—I believe it was one evening or in the morning, I forget which—Mr. Klitgaard told me that they had found it was unnecessary to remove that shaft.

Q. That is all you know about it?

A. That is all.

Q. Now, let us come back to the occasion, Captain

(Testimony of Charles W. Saunders.)

Saunders, when you said on your direct examination that you were present during a conversation between Mr. Gray and Captain Matson, when you say that Captain Matson accepted Mr. Gray's bid and tell us again what that conversation was.

A. Captain Matson told Mr. Gray that he was going to give him the job, but he still thought the bid was too high, but inasmuch as there was a doubt about the crank-shaft being taken out, that he would follow up the suggestion as made by Mr. Gray and put a timekeeper on, so that he would get the benefit of any deduction in price from the original bid caused by the not taking out of the crank-shaft.

Q. And that was all the conversation?

Mr. McCLANAHAN.—The witness has not had a chance to finish, Mr. Frank. [1570—1482]

Mr. FRANK.—If he has not, he can go on now.

A. Then there was some talk about the timekeeper, I believe.

Q. Is that all?

A. That is about the substance of it.

Q. That is all that you remember at this time of the conversation between them; is that right?

A. I think that is all that I remember just at present.

Q. Why do you say "just at present"?

A. Because that is all that I remember just at present.

Q. This morning you testified that either at that conversation or some other conversation Gray figured \$2,000 would be the cost of the removal of the crank-

(Testimony of Charles W. Saunders.)

shaft. Do you remember that?

A. Yes, sir, that was the estimated cost.

Q. When was that conversation?

A. I think it was either at our conversation when he rejected the first bid—I think it was at this conversation.

Q. What did Mr. Gray say? Give us his language as near as you can on that subject.

A. When the captain asked him about what he figured would be the deduction in case it was unnecessary to take that crank-shaft out Mr. Gray said in the neighborhood of \$2,000.

Q. \$2,000? A. Yes, sir.

Q. Was anything further said about it?

A. I don't remember if there was anything further said.

Q. Now you have just answered me after my asking you why you said you believed that was all the conversation at the present time, that there was some conversation at the time you claim the bid was accepted concerning the timekeeper. Do you recall any further conversation concerning the timekeeper?

A. Only at the one conversation; either that or the time the other bid was rejected, the captain asked Mr. Gray if he knew of [1571—1483] anybody competent for that position. Mr. Gray mentioned several names, only one of which I remember. That was Mr. Putzar.

Q. And what was further said about appointing a timekeeper? A. Nothing that I remember.

Q. At any conversation that you were present at

(Testimony of Charles W. Saunders.)

was there nothing further said?

A. Nothing further at any conversation between Mr. Gray and Captain Matson.

Q. Except as I understand you Captain Matson said that he would put on a timekeeper to keep time on the question of the crank-shaft; is that right?

A. So as to get the benefit of any deduction in case the crank-shaft was not taken out.

Q. That was all that was said?

A. That was all I think at that time in my presence.

Q. Well, at any time that you have any recollection of or that you were present was anything further said on that subject? A. Not that I recollect.

Q. You have had considerable experience, have you not, in the repair of these vessels?

A. I have since that time.

Q. Have you had any extensive repairs on any vessel since that time?

A. Not while I was supervising the job.

Q. Not while you were supervising?

A. No, sir.

Q. Have you ever upon any other occasion appointed a timekeeper? A. Never.

Q. As an ordinary rule for a small matter, does not the engineer take care of that matter of time?

A. Not now.

Q. I do not mean now. I mean generally in the matter of repairs on ships.

A. Previous to that contract the engineer usually

(Testimony of Charles W. Saunders.)

looked out for small matters that were not contracted for.

Q. That is he kept the time?

A. He kept track of the time. [1572—1484]

Q. You understand that to be the general rule, do you not, Captain?

A. I have no idea about how it is run in other countries.

Q. And now I understand that your work is all done on contract, is that right? A. I believe so.

Q. And you do not employ any timekeepers at all?

A. I don't know of any instance.

Q. By the way, did I understand you to say this morning that you knew Mr. Putzar before this transaction? A. I never met him before.

Q. Did you come in contact with him frequently during this transaction?

A. I saw him frequently.

Q. Would you undertake to say that he was otherwise than a man of the highest integrity?

Mr. McCLANAHAN.—I object to that as immaterial.

Mr. FRANK.—We will see whether it is or not.

A. I have no reason to suppose either one way or the other.

Q. You have no reason to suppose either one way or the other. By that you mean you have no reason to suppose that he was not a man of the highest integrity?

Mr. McCLANAHAN.—I object to that as immaterial.

(Testimony of Charles W. Saunders.)

A. From any dealing I had with him I don't think that I would be in a position to form any particular opinion of him. I simply saw him as a timekeeper and afterwards as an engineer. Personally I did not like him.

Mr. FRANK.—Q. You did not like him personally? A. No, sir.

Q. Go on with the rest of it.

A. I don't think there is anything else.

Q. Now, with reference to these specifications that we have had here Captain. You say that you saw Mr. Klitgaard dictate the specifications to a stenographer? [1573—1485]

Mr. McCLANAHAN.—I object to that. He did not say he saw him dictate them.

A. I saw him give them to a stenographer.

Mr. FRANK.—Q. Oh, you saw him give them to a stenographer? A. Yes, sir.

Q. And that was at what time?

A. That was after his arrival in San Francisco in July.

Q. In July? A. Yes, sir.

Q. Is that the first time they were given to a stenographer in the office?

A. The first time to my knowledge.

Q. And he arrived on what date, at that time?

A. I should say about July 20th.

Q. Did you not say this morning that she arrived on July 22d?

A. I don't think I said that; I might have said about the 22d. But it was a day or two previous

(Testimony of Charles W. Saunders.)

to that I believe.

Q. Well, and when do you say the specifications were prepared?

A. A day or so after her arrival here.

Q. That would make that about July 22d, would it not? A. About July 22d.

Q. These were the first specifications that were written, were they not? A. Yes, sir.

Q. After the specifications were written who delivered them to the different iron works?

A. I could not say whether they were mailed or delivered by messenger.

Q. Whether mailed or delivered by messenger, who mailed them, or who sent them by the messenger?

A. Captain Matson would say who to send them to.

Q. That is not what I am asking you, Mr. Saunders. Who sent them out?

A. That I could not say. [1574—1486]

Q. You did not, did you?

A. I don't recollect that I did.

Q. In the ordinary course you would not have the handling of that end of the transaction, would you? A. No, sir.

Q. And you would not undertake to say that you sent out any specifications whatsoever relating to these repairs? A. Not personally.

Q. Nor supervise the sending out of any specifications?

A. That might be possible under Captain Matson's direction at that time.

(Testimony of Charles W. Saunders.)

Q. I am not asking you what might be possible; I am asking you what was the fact in this instance?

A. In that particular instance I do not recollect who sent them out.

Q. You do not recollect who sent them out?

A. No, sir.

Q. You were shown this morning two sets of these specifications which differed in some respects, one from the other, and you attempted to account for the difference by saying there was a postponement. Was there more than one postponement?

A. I could not say. I don't think there was.

Q. If there should be other specifications that differ again from both of these how would you account for that?

Mr. McCLANAHAN.—I object to that question as calling for the conclusion of the witness on a matter that is absolutely foreign to his evidence, and utterly impossible for him to account for something he does not know anything about.

Mr. FRANK.—Is that a legal objection or an instruction to the witness?

Mr. McCLANAHAN.—It is an objection that the Court would sustain, if he heard it. He never would allow such a question in the world. [1575—1487]

Mr. FRANK.—Then he would not have allowed your examination this morning.

A. I shall have to ask to have that question repeated.

Mr. FRANK.—Read the question, Mr. Reporter.

(The Reporter reads the question as follows: “Q.

(Testimony of Charles W. Saunders.)

If there should be other specifications that differ again from both of these, how would you account for that?")

A. I don't think I would attempt to account for it. [1576—1487½]

Q. You would not be able to, would you, Captain?

A. I could not account for it.

Mr. McCLANAHAN.—Q. You would have to see the specifications, would you not?

A. I certainly would.

Mr. McCLANAHAN.—Why don't you show him the specifications, Mr. Frank? You should treat the witness fairly.

Mr. FRANK.—Oh, I will treat him fairly. If you only treated my witnesses the same as I treat yours you would be very much less open to criticism. Now, let us have the last question and answer read. (Question and answer read.) Now, I show you Respondent's Exhibit Christy "C," and ask you to compare it with the other two that you have testified to and when so compared, explain, if you can, the difference in those specifications.

A. That is simply a list of work, I should judge, furnished so as to make a number of more copies.

Q. A list of work furnished to whom?

A. That is a list of work according to the specifications. We were called on several times for more copies after the work was commenced.

Q. Why did you not, if that was the case, furnish an exact copy?

(Testimony of Charles W. Saunders.)

A. I think that is exact with the exception of the latter paragraph.

Q. With the exception of the latter paragraph?

A. Yes.

Q. What has the last paragraph on Respondent's Exhibit Christy "C" got to do with the list of work?

A. The last paragraph is not in here.

Q. The last paragraph that is in there I am referring to?

A. I am referring to the last paragraph in the other.

Q. I understand, Captain, but I am asking you what has that [1577—1488] last paragraph in that exhibit got to do with the list of work?

A. The time limit is one thing and light and water to be furnished free is another thing.

Q. When you say "we" to whom do you refer?

A. In what do you mean, the expression "we"?

Q. You said "we" were asked for lists of work.

A. The Matson Navigation Company.

Q. That is rather an indefinite term. Were you personally ever asked for it?

A. I was asked by Mr. Klitgaard for more copies.

Q. Were you ever asked by any member of the United Engineering Works for more copies?

A. I could not say.

Q. Then, when you say you were asked for lists of work all you have any recollection of or what you refer to is lists of work you were asked by Mr. Klitgaard for?

A. Yes, he said that some of the foremen—

(Testimony of Charles W. Saunders.)

Mr. FRANK.—I don't care what he said.

Mr. McCLANAHAN.—Just wait a moment. Let him answer.

A. (Continuing.) That some of the foremen did not have copies of the specifications and he asked me for more.

Mr. FRANK.—Q. I notice, Captain, that you use the term "list of work." How do you happen to make use of that term?

A. The work to be done on a ship is commonly called a list of work, and it is recognized as going to be done under some certain specifications.

Q. Why do you use the term "list of work" instead of the word "specification," when, in this instance, the document you are speaking of is one and the same thing?

A. I am in the habit of using both terms.

Q. I understand you to say that you never before had any [1578—1489] work of this kind done that you had to supervise or attend to?

A. That is right.

Q. When did you form that habit?

A. Since I have been with the Matson Navigation Company.

Q. Have you read over the testimony in this case?

A. I have not.

Q. Have you discussed it with counsel in this case?

A. I have not.

Q. I am right, now, am I not, Captain, in the conclusion that you had nothing whatsoever to do with sending out these specifications for bids?

(Testimony of Charles W. Saunders.)

A. I might have sent them out myself; I do not recollect.

Q. You do not recollect? A. No.

Q. And you had no recollection upon that subject this morning either, did you? A. I was not asked.

Q. Well, whatever you may have testified to this morning upon the subject of sending out these specifications or delivering them to the different iron works for bids, that testimony was given without any knowledge or thought that you yourself did it?

A. Exactly.

Q. And you do not know who did do it?

A. I think—I am pretty sure that I delivered the Union Iron Works specifications in person.

Q. And that is the only one?

A. That is the only one that I remember I delivered.

Q. Then you would not know of your own knowledge what the specifications were that were delivered to the United Engineering Works for bids, would you?

A. I do not think I could say that I would know that exact copies were given to these other people of my own personal knowledge. [1579—1490]

Q. Referring now to “Respondent Saunder’s Exhibit No. 1,” when did you see that particular paper last before being examined this morning?

A. I should say about two years ago.

Q. You have not seen that paper then from two years ago until it was presented to you here this morning at the examination when we were all pres-

(Testimony of Charles W. Saunders.)

ent; is that right?

A. I will withdraw that answer, I think.

Q. Very well. Give us whatever other answer you think is proper.

A. I very probably saw this a year ago.

Q. You probably saw it a year ago? A. Yes.

Q. Why do you say probably?

A. Because I saw these papers before they were sent to the counsel; in fact, I think I had them in my desk.

Q. You only think so?

A. I know I had the specifications in my desk.

Q. Do you know you had that document in your desk?

A. I don't know that I had that exact document.

Q. Is there anything upon the face of that document which enables you to identify it as a document that you had ever seen before?

Mr. McCLANAHAN.—That is, you refer to the physical paper, do you, Mr. Frank?

Mr. FRANK.—Just as it stands there, that particular paper.

A. It is an exact copy of the ones that were sent out.

Q. Do you remember the details of the ones that were sent out without having examined them within a year?

A. I certainly remember the latter part of it.

Q. Is that the only part of it you remember?

A. No, I remember that crank-shaft; I remember several of them there. [1580—1491]

(Testimony of Charles W. Saunders.)

Q. Well, what do you remember there, when you say you remember the crank-shaft—do you remember the detail that is set forth in that document relating to the crank-shaft?

A. Only the general detail.

Q. Well, what is the detail?

A. The one that calls for the removal of the crank-shaft.

Q. What does it say respecting the crank-shaft?

A. It says the crank-shaft is to be removed to the shop and placed in a lathe and the thrust-shaft would have to be coupled to it, and all the line shafting would have to be trued up. That is about all I can tell you on that particular paragraph.

Mr. McCLANAHAN.—I would like to have it appear of record that the witness is making his statement without referring to the paper.

Mr. FRANK.—Certainly.

Q. And that is all you can remember about that?

A. About that paragraph.

Q. Is that the part of that specification which you have just mentioned as the 'subject matter of the conversation between Mr. Gray and Mr. Klitgaard and Captain Matson, respecting the crank-shaft not having to be taken out?

A. That is the same crank-shaft referred to.

Q. I am not saying about the same crank-shaft, I am talking now about what you have said as the part of the specifications relating to the crank-shaft that would not have to be carried out?

(Testimony of Charles W. Saunders.)

A. Removing the crank-shaft to the shop is the part.

Q. Removing the crank-shaft to the shop is the part?

A. And the work to be done on it after it was in the shop.

Q. And that is all there is in that specification that was the subject of conversation between these parties? [1581—1492]

A. At which I was present; that was the main item of the specifications, the only one upon which there was apparently any doubt.

Q. Now, I show you Respondent Siverson Exhibit "A," and ask you when you saw that document last before your examination here this morning?

A. I really could not say.

Q. Well, did you ever see it before?

A. I have probably seen one, either that one or one exactly like it before.

Q. Then you are not prepared now to say that you saw that particular document before?

A. Not that particular piece of paper.

Q. And how long has it been since you have seen one that you think is like that?

A. That I should say is about two years.

Q. And you did not go over this matter with counsel before your examination here? A. No.

Q. Did you go over any of these matters with counsel or with anyone before your examination here?

A. None of those specifications.

Q. How long has it been, Mr. Saunders, since you

(Testimony of Charles W. Saunders.)

saw what you deem to be a copy of Siverson's Exhibit "A"?

A. I do not recollect seeing that inside of say 15 months.

Q. Inside of 15 months? A. Yes.

Q. What was the occasion upon which you saw what you deem to be a copy 15 months ago?

A. When there was some reference to the case; I forget now what it was. I had some things in my desk. I am under the impression that our first counsel wanted some papers.

Q. What did you do then with respect to the copy of such specifications?

A. If I had one I probably passed it [1582—1493] over to Mr. Gregg.

Q. Now, you are dealing entirely with suppositions, Captain. Do you know as a fact you did have that one, or did not have that one?

A. I don't know for a fact that I had an exact copy of that exhibit.

Q. What is there on this exhibit, Siverson Exhibit "A," that enabled you this morning to identify it as an exact copy of specifications sent out as you say to different bidders on this work?

A. The general work contained in it and the finishing paragraphs here.

Q. That is all, is it? A. Yes.

Q. Was it sent out to them on the date that it bears? A. I could not say.

Q. Was any one of them sent out on the date they bear?

(Testimony of Charles W. Saunders.)

A. I believe they were all sent out at the same time, on the same day, whatever date that was.

Q. On the same day? A. I believe so.

Q. Did you keep an original on file in the office of any of these specifications?

A. I don't know whether there was any on file or not. I had one in my desk until I turned it over to Mr. Gregg, I think.

Q. In your supervision of the work that was being done on board this vessel, do you remember the work that was done on the tank-top? A. Yes.

Q. What was it that was done on the tank-top?

A. They put a number of new plates on one side in the No. 4 tank-hold.

Q. Is that all that was done there on that tank-top?

A. I could not tell you just the extent of the work that was done, but there were a number of new plates put in. Of [1583—1494] course, the tank had to be cleaned out before they could work there.

Q. Do you mean to have us understand that the work was confined to new plates on one side?

A. On one side.

Q. That is all that you remember about?

A. The detail of the work I do not remember but it was new plates, and possibly a few new angles.

Q. And you want us to understand that it was confined to the plates on one side?

A. On one side altogether.

Q. That is all that you remember of?

A. I know it was only on one side.

(Testimony of Charles W. Saunders.)

Q. You know it was only on one side? A. Yes.

Q. How far did it run on that side, fore and aft?

Mr. McCLANAHAN.—Do you mean the new plating, Mr. Frank?

Mr. FRANK.—Yes.

A. On the forward end of the tank-top it ran to within several feet of the bulkhead, I believe up to the butt of the last plate forward, and I believe that the plate underneath the aft bulkhead was not disturbed.

Q. That is the extent of your knowledge of that work? A. That is the extent of my knowledge.

Q. How far does that tank-top run?

A. That particular tank-top was simply under the No. 4 hold; it is divided off from the No. 3 tank by a bulkhead.

Q. How far aft does it run?

A. I think it runs right to the after end of the ship. The No. 4 hold is very close to the after end of the ship.

Q. Was it renewed clear to the after end of the ship? A. No.

Q. It was not? A. No.

Q. Are you certain of that, Captain? [1534—1495]

A. I am positive of that. They could not renew them clear to the after end of the ship without removing the bulkhead, and the bulkhead was not removed.

Q. That is your reason for thinking it was not renewed to the after end of the ship?

(Testimony of Charles W. Saunders.)

A. I know it was not renewed.

Q. Do you know where Mr. Putzar is now?

A. I do not.

Q. Have you made any attempt whatsoever to find him? A. No, I have not made any attempt.

Q. Do you know whether anybody has made any attempt on behalf of the Matson Navigation Company to find him? A. No, I have no idea.

Q. Why was it, Mr. Saunders, when Captain Matson questioned the correctness of this bill, that you did not show him the report which you say you had from Mr. Klitgaard on the work?

A. Captain Matson did not care about the report on the work, he wanted a report on the time.

Q. He did not care about a report on the work; he wanted a report on the time, did he? A. Yes.

Q. You got this book marked "Curtis Exhibit No. 4"—do you know what that is?

A. That is the time-book, I believe.

Q. Don't you consider that a report on the time?

A. I don't know anything about that, Mr. Frank.

Q. Well, as a matter of fact, don't you know that that contains every item of time, every detail both of men who worked on there, the hours worked and the classification?

Mr. McCLANAHAN.—I object to the question upon the ground that it does not contain every item of detail of the time worked on the job.

Mr. FRANK.—Oh, you are trying to make a distinction now between the time kept on the ship and the time kept in the shop. [1585—1496]

(Testimony of Charles W. Saunders.)

Mr. McCLANAHAN.—It is very easily made.

Mr. FRANK.—Q. Well, does not that contain every item of time on the ship work?

A. I don't know.

Q. You never examined to find out?

A. I don't think that my opinion would be worth much if I did because it is the first and only time-book I have ever seen.

Q. Did you pass that up to Captain Matson at the time? A. I told him I had the time-book.

Q. You told him you had the time-book?

A. Yes.

Q. What did he say?

A. He said he wanted a report as to the time by Putzar.

Q. Did you not tell him that that was Putzar's report on the time?

A. No, I told him that was the time-book Putzar had given me.

Q. But he did not look into it and examine it?

A. I don't know whether he examined it or not.

Q. When this bill came in, Captain, was it referred to you?

A. We did not discover that bill for quite a while after it did come in and then it was referred to Captain Matson by wire.

Q. By "we" who do you mean, when you say that we did not discover that bill for quite awhile after it did come in?

A. As I remember it, Mr. Curtis came in to the office after some money on account of the bill. Mr.

(Testimony of Charles W. Saunders.)

Gregg inquired from different ones in the office if they had seen a bill from the United Engineering Works; he inquired of me also. We found it finally in a drawer into which the bills were thrown in the course of the month and then sorted over at the end of the month. That was the first time I had seen it, or anybody else.

Q. And you do not know then when the bill was really first presented at the office? A. No.
[1586—1497]

Q. It might have come in on the date which it bears, September 27th, and been lying there from that time on?

A. It could not have come in in September, otherwise it would have been found and paid—no, not paid, but it would have been found and gone in with the other September bills.

Q. You are assuming that the bill you could not find in September would have been found if it had been in there in September; that is what your argument amounts to.

Mr. McCLANAHAN.—I object to that. There is no such inference to be drawn from his testimony at all.

Mr. FRANK.—Oh, let the witness take care of himself, Mr. McClanahan.

A. At that time the bills were all gone over at the end of every month, they were taken out of that drawer.

Q. Who goes over them? A. The bookkeeper.

Q. Don't you go over them?

(Testimony of Charles W. Saunders.)

A. Not until after the bookkeeper has had them.

Q. The bookkeeper goes over them and then passes them to you? A. He passes some bills to me.

Q. What do you mean by "some bills," those which have to do with the repair of vessels?

A. No, bills that are in my department, supplies for the ships.

Q. Are not bills of that nature in your department? A. Not now.

Q. But I mean then?

A. At that time bills of that nature were passed up to Captain Matson.

Q. Were not other bills relating to this work passed up to you at that time for your O. K.?

A. In Captain Matson's absence some of the bills were. [1587—1498]

Q. Well, Captain Matson was absent at that time, was he not? A. Yes.

Q. And it would have been your duty to go over that bill?

A. If he had wired me instructions I would have gone over it.

Q. Did you ever go over that bill with Captain Matson?

A. I never went over it with Captain Matson, no.

Q. You never went over it with him? A. No.

Q. He never asked you anything about the work specified here, whether it was performed or how it was performed, or anything about it?

A. He asked me how it happened to be such a tremendous big bill.

(Testimony of Charles W. Saunders.)

Q. Is that all he said to you?

A. That is the sum and substance of that conversation.

Q. Did you then go into details with him, or did you give him just as short a reply as the question was? A. I told him I did not understand it.

Q. That is all you said?

A. That is all that I said about that bill.

Q. And he did not ask you about any of the details of it at all, did he?

A. I do not remember that he did.

Q. When he asked you that question, did it not occur to you that the report which you say you got from Mr. Klitgaard, the chief engineer, would serve as an answer or an explanation? A. No.

Q. It did not occur to you? A. No.

Q. You did not say anything to him about it?

A. We did not expect to get the bill in that shape.

Q. Answer my question: you did not say anything to him about it? A. About what? [1588—1499]

Q. About the report?

A. I don't know that I spoke to him at that time about it.

Q. Did you ever speak to him about it?

A. I told him I had a report from Mr. Klitgaard.

Q. And that is the time he said he did not want to see it? A. He was busy at that time.

Q. Well, what reply did he make, if he was busy?

A. That he had not time to look at it, probably.

Q. You say "probably"; do you wish us to understand that that is what he said, or that he probably

(Testimony of Charles W. Saunders.)

said that? A. He probably said that.

Q. Then you are not testifying that he said that?

A. No.

Q. You do not remember what he did say?

A. I could not say the exact words. I know that he did not see it.

Q. You do not know the substance of what he said, do you? A. Yes.

Q. What was it? A. That he did not see it.

Q. I mean what he said?

A. I told him I had the report, and I am very sure that he did not have time to look at it then.

Q. He never asked you afterwards for it either, did he? A. I don't remember that he did.

Mr. FRANK.—It is now 4:15 and I would like to have this go over now until to-morrow morning. I cannot intelligently continue the cross-examination. I will have an opportunity to look over this testimony. It will save a great deal of record.

Mr. McCLANAHAN.—I am very much concerned to finish the case of the respondent as soon as possible so as to come within the order of the Court. It seems to me we ought to be able to work until 5 o'clock every day.

(An adjournment was here taken until to-morrow, Wednesday, *October 31st*, 1911, at 10 A. M.)
[1589—1500]

(Testimony of Charles W. Saunders.)

Wednesday, November 1st, 1911.

CHARLES W. SAUNDERS, recalled.

Mr. FRANK.—I have finished with the witness.

Redirect Examination.

Mr. McCLANAHAN.—Q. Captain Saunders, I want to ask you just one question. Was the request ever made to the United Engineering Works for a segregation of their bill as it was presented originally? A. Yes, sir.

Q. Was that request complied with?

A. Never to my knowledge.

[Testimony of C. C. Kinsman, for Respondent.]

C. C. KINSMAN, called for the respondent, sworn.

Mr. McCLANAHAN.—Q. What are your initials, Mr. Kinsman? A. C. C.

Q. How old are you? A. 34.

Q. What is your business?

A. Marine engineer and machinist.

Q. What is your present occupation?

A. Marine engineer.

Q. Are you connected with any ship?

A. Not at present.

Q. Are you not chief engineer of the “Hilonian”?

A. Not at the present time, no.

Q. What do you mean by that?

A. I have a man in my place as chief engineer.

Q. He is a substitute, is he not? A. Yes, sir.

Q. You are, then, chief engineer of the “Hilonian”?

(Testimony of C. C. Kinsman.)

A. Well yes, I am looking after certain work for them now.

Q. For who now?

A. For the steamer "Hilonian."

Q. Are you not in the employ of the Matson Navigation Company? A. Yes, sir. [1590—1501]

Q. How long have you been chief engineer of the "Hilonian"?

A. I was chief of her in the latter part of March.

Q. That is not what I asked you. I asked you how long you were chief of her?

A. About five months in all.

Q. Mr. Kinsman, you have relinquished the chief engineership solely for the purpose of attending the hearing in this case, have you not?

A. Yes, sir, but I was chief engineer of her on a previous occasion.

Q. For how long?

A. For about a month and a half.

Q. And after this case is concluded and your evidence is given you expect to go back into her as chief engineer? A. Yes, sir.

Q. Prior to acting in the capacity of chief engineer, had you any connection with the "Hilonian"?

A. I was first assistant.

Q. How long were you first assistant engineer?

A. From May, 1909, to July, 1910, and then from the latter part of April, I think, up to—

Mr. FRANK.—Q. April of what year?

A. This year; up to about four months ago.

(Testimony of C. C. Kinsman.)

Something like that. I don't remember just the date.

Mr. McCLANAHAN.—Q. After leaving the “Hilonian” at the time you were first assistant engineer did you still remain in the employ of the Matson Navigation Company? A. Yes, sir.

Q. In what work, in what capacity?

A. I was appointed chief engineer of the ship.

Q. Of what ship?

A. The steamship “Hilonian.”

Q. Did you not do some work down in Honolulu for the Matson Navigation Company?

A. That was between the dates when I was down there for eight months. [1591—1502]

Q. When was that?

A. I left here in the latter part of July, or the 1st of August.

Q. What year?

A. 1910; and returned in March of this year.

Q. And while there what were you doing?

A. I was chief engineer of the “Intrepid.”

Q. How long have you been in the employ of the Matson Navigation Company?

A. From May, 1909, to date.

Q. Do you remember the trip of the “Hilonian” when she arrived in this port in the year 1909, on an occasion when Mr. Christy of the United Engineering Works visited the ship in the harbor before she docked?

A. I remember Mr. Christy coming down in the .

(Testimony of C. C. Kinsman.)

engine-room when we were in quarantine.

Q. Then your answer to my question is yes?

A. Yes, sir.

Q. What did Mr. Christy do down in the engine-room? A. He looked around.

Q. What was he there for, do you know?

A. I could only judge from the questions he put to me.

Q. Well, I have asked you what he did.

A. He asked me if I thought the crank-shaft was sprung or bent. His questions seemed to point to the crank-shaft particularly.

Q. Tell us the whole of the conversation. What was done and said?

A. Well, I don't remember the exact conversation, but when he asked me whether or not I thought it was sprung I told him no. He asked me for my reasons and I gave them to him.

Q. What else did he say?

A. That is the only thing that I remember.

Q. Did he see the engine in operation?

A. Yes, sir.

Q. How long was he down there?

A. Well, I should say at the very least 15 or 20 minutes. [1592—1503]

Q. What was his opinion in regard to the crank-shaft after he had seen it in operation?

Mr. FRANK.—If he expressed it. What did he say?

A. I don't know whether he expressed it directly

(Testimony of C. C. Kinsman.)

or not, but he gave me the idea that he thought it was sprung.

MR. McCLANAHAN.—Q. How did he take your explanations which were given him as a basis for your reasons?

A. I think he tried to—he did argue against it.

Q. What was the result of the argument?

A. Well, I think I created a doubt in his mind.

Q. Before he left the engine-room?

A. Yes, sir.

Q. A doubt in his mind as to his belief?

A. Yes, sir.

Q. Did you know Mr. Christy at that time to be connected with the United Engineering Works?

A. Yes, sir.

Q. Did you know that at that time repairs were contemplated? A. Yes, sir.

Q. Do you remember when that was, Mr. Kinsman, that Mr. Christy visited the ship?

A. I cannot say now whether it was the trip that we laid up or whether it was the previous trip. It was one or the other.

Q. When was the ship laid up for repairs?

A. In August, 1909.

Q. Do you know whether any specifications were prepared of the work to be done to the "Hilonian" at that time?

A. I was furnished a copy that trip.

Q. What time were you furnished a copy?

A. I don't recall whether it was just before going over to the yard or just going over to the yard. It

(Testimony of C. C. Kinsman.)

was about that time—between the arrival and going over to the yard, I think.

Q. Who furnished you the specifications?

A. Mr. Klitgaard, the chief engineer. [1593—1504]

Q. Have you got that specification now?

A. No, sir.

Q. I hand you the exhibits, “Saunders No. 1,” “Siversen’s A” and “Christy’s C,” and ask you to examine those exhibits and see if you can identify the work on them, or called for by them. Take your time about examining them.

A. That seems to me more like the copy that I received with one exception (handing).

Q. You refer now to “Saunders Exhibit No. 1”?

A. Yes, sir; with the exception that this last sheet was not included.

Q. That is sheet No. 3?

A. Yes, sir; sheet 1 and 2 seems to me to be the same with the exception of the 26 days.

Q. What did your copy have on?

A. If I remember correctly, it was 25 days.

Q. You perhaps do not know that you have not answered my question. I wanted you to examine the work called for by those lists.

A. I have done it.

Q. Can you identify the work called for by the three lists? A. Yes sir; that is the work.

Q. When you say “that is the work,” what do you mean? A. That was called for at that time.

Q. On your specifications that you had?

(Testimony of C. C. Kinsman.)

A. Yes, sir.

Q. So that the work called for in your specifications is identical with the work called for in those three specifications? A. Yes, sir.

Q. And you think that your list was more like "Saunders Exhibit 1"? A. Yes, sir.

Q. With the exception of the last page?

A. Yes, sir.

Q. Why do you say that? What is there on it that makes you identify it?

A. My copy does not contain the third page at all.
[1594—1505]

Q. Yes. Why do you identify that as more nearly resembling your copy?

A. One reason is the paper is nearly about the same size, and as I remember the work on that job, it was practically the same as contained in these two sheets.

Q. Is the size of the paper the only thing that makes your recollection— A. No.

Q. Wait until I finish my question—that makes you identify "Saunders 1" as being more nearly resembling the one that you had, aside from the work itself enumerated?

Mr. FRANK.—Of course, Mr. McClanahan, all this examination is subject to objection. It is immaterial what specifications he had. He had no connection with us whatsoever to bind us to any particular specifications. The Matson Navigation Company is at liberty to give anything it pleases to its own employees.

Mr. McCLANAHAN.—You are not even suggest-

(Testimony of C. C. Kinsman.)

ing, Mr. Frank, that your employees did not have copies of these specifications.

Mr. FRANK.—I am not making any suggestions at all, one way or the other, Mr. McClanahan. There have been some things testified to here yesterday that if I were to make suggestions about would probably surprise you.

Mr. McCLANAHAN.—You seem to forget that one of the exhibits that the witness is examining was produced by one of your witnesses, an employee of the United Engineering Works.

Mr. FRANK.—That is all right, it was not produced by one of our witnesses. You are referring to the “Siversen Exhibit”; that was produced by yourself and taken out of your own file. [1595—1506]

Mr. McCLANAHAN.—What about Christy?

Mr. FRANK.—That was produced from my files and not by Siverson.

Mr. McCLANAHAN.—It was identified by Christy, nevertheless.

A. I don't know but what the size of that paper has some effect on my mind.

Q. I did not ask you that. I asked you if that was the only means you have of identifying “Saunders 1” with yours, the size of the paper?

A. No, sir; the contents of it.

Q. You have already testified that the work on the three is the same as the one which you had. Now, I say, eliminating the question of work is the size of the paper the only thing that makes you connect “Saunders 1” with yours? A. I think it is.

(Testimony of C. C. Kinsman.)

Q. Do you know, Mr. Kinsman, whether any of the employees of the United Engineering Works during the progress of these affairs had copies of these specifications?

A. I saw similar copies in the hands of two of their men.

Q. Who were those men?

A. Mr. Williamson and Mr. Siverson.

Q. Mr. Siverson is present at this hearing here now, is he not? A. Yes, sir.

Q. Do you know when the "Hilonian" went to the yards of the United Engineering Works?

A. On the morning of the 23d of August.

Q. Were you on the ship? A. Yes, sir.

Q. At the time of leaving this side of the bay, were there on board of the ship any of the employees or operators of the United Engineering Works?

A. Yes, sir.

Q. What were they doing?

A. Well, they were working on the donkey-boiler, and I think there were men working in the engine-room. [1596—1507]

Q. What were they doing in the engine-room?

A. I could not recall just now.

Q. Can you recall whether they were doing anything connected with the specifications which you have identified?

A. Well, I know they would not be doing anything outside of the specifications?

Q. Was there nothing to be done to the "Hilonian" outside of the specifications.

(Testimony of C. C. Kinsman.)

A. Not at that time.

Q. What time did you arrive at the yards of the United Engineering Works that morning?

A. In the early forenoon.

Q. That is rather indefinite; that covers a period of six to possibly four hours or three hours. Was it before 9 o'clock or after 9 o'clock?

A. Probably was about that time.

Q. About what time? A. About 9.

Q. Do you know whether any preparations had been made for the receipt of the "Hilonian" at the yards of the United Engineering Works?

A. I don't.

Q. How soon after her arrival did any employees of the United Engineering Works from the yards board the ship?

A. Immediately upon her arrival.

Q. When was work commenced on board the "Hilonian" after her arrival at the yards of the United Engineering Works? A. At once.

Q. What was that work?

A. The first work was the stripping of the reciprocating gear.

Q. Down in the engine-room? A. Yes, sir.

Q. Had you at that time, Mr. Kinsman, known of the question of whether the crank-shaft of the "Hilonian" would have to come out or stay in the ship. Did you know that that was a question undetermined at that time?

A. Yes, sir. [1597—1508]

Q. How long after the arrival of the "Hilonian"

(Testimony of C. C. Kinsman.)

was it before that question was finally determined?

A. I could not say. There was considerable argument *pro* and *con*.

Q. Was it a matter of days? A. Yes, sir.

Q. What was the final determination?

A. That they would not take the shaft out.

Q. Who was it that participated in the conclusion of that question or the argument?

A. Why, I think everybody on both sides had it.

Q. What do you mean by "both sides." Both sides of the ship?

A. No, sir. The United Engineers and the Matson Navigation Company.

Q. Who, representing the United Engineering Works, discussed that matter?

A. I think Gray and Williamson. That is all I can recall now.

Q. And who on the side of the Matson Navigation Company?

A. Well, I was drawn into it. Principally Mr. Klitgaard.

Q. Was any work necessarily done to the crank-shaft or any of the machinery connected therewith that had anything to do with the decision of that question?

A. I think they made a test of the shaft with lines, or tried to.

Q. When you say "they," who do you mean?

A. Representatives of the United, and engineers of the Matson Navigation Company.

Q. Did you participate in that? A. No, sir.

(Testimony of C. C. Kinsman.)

Q. Did you see it done?

A. No, sir, I saw the preparation for it.

Q. What was the preparation?

A. Why, they were putting up [1598—1509] rigging to put the lines on the shaft.

Q. How extensive an undertaking was that?

A. It might require a little time, but practically no labor.

Q. When you say “a little time,” what do you mean by that?

A. Well, it would depend upon the man who was doing it, how careful he was. One man might run a line in 15 or 20 minutes and another man might take an hour and a half.

Q. Would you limit the time to an hour and a half for the running of that line?

A. I don't know exactly what they did do.

Q. In other words, you do not know how long they took to run the line? A. No, sir.

Q. In your judgment it ought not to exceed an hour and a half?

A. In my judgment I would not try the shaft in that way.

Q. In order to test it for being sprung?

A. Yes, sir.

Q. Was there any work done in order to determine the question of the removal or the nonremoval of the shaft to the shaft itself other than the running of the line which you spoke of? A. No, sir.

Q. Was there any work done to any other part of any of the machinery of the ship? A. No, sir.

(Testimony of C. C. Kinsman.)

Q. Do you remember a bulkhead that was cut in the ship subsequently? A. Yes, sir.

Q. Was that bulkhead cut in order to determine the question of whether the shaft would be removed or not? A. No, sir.

Q. What was that bulkhead cut for?

A. For the removal of the first length in the intermediate shafting.

Q. Is that work called for by the specifications?

A. No, sir, I don't think so. (After examination.)
No.

Q. Why was that intermediate shafting removed?
[1599—1510] A. To face up the coupling.

Q. To face up the coupling on the shaft?

A. Yes, sir.

Q. Was that called for by the specifications?

A. Well, it don't call for it directly.

Q. Well, make what explanation you have got to make.

A. I think from the condition of that coupling, if you make the proper alignment which is called for in the specification it would be necessary.

Q. The proper alignment of what?

A. Of the shafting.

Q. The specifications then called for an alignment of the shafting? A. Yes, sir.

Q. And in order to accomplish that work, was it or was it not necessary to remove to the shop the intermediate shafting?

A. I would not consider it such. Can I make another explanation?

(Testimony of C. C. Kinsman.)

Q. Certainly.

A. It calls for the removal or the cutting of a portion of the bulkhead of that engine-room for the removal of that crank-shaft. You asked me the question whether or not any portion of the bulkhead was removed. There was a portion removed, but not the portion of the bulkhead that was necessary for the removal of that crank-shaft.

Q. It was a different part?

A. It was a different portion of the bulkhead.

Q. That was removed? A. Yes, sir.

Q. The portion of the bulkhead called for under Specification 9 of the contract for the removal of the crank-shaft was not cut? A. No, sir.

Q. Mr. Kinsman, was there at any time during the course of these repairs work unnecessarily done? I mean by that, was there work done which was replaced as unnecessary work after [1600—1511] it had been done? A. I don't recall any.

Q. What was your duty in connection with the work being done on the "Hilonian" while you were at the yards?

A. I was in charge of the crew of the ship; that is, the engine-room department.

Q. You, then, were familiar with the progress of the work in the engine-room? A. Yes, sir.

Q. Does your last answer apply to the engine-room? A. Yes, sir.

Q. As to unnecessary work? A. Yes, sir.

Q. What was the condition of the "Hilonian's" engine-room machinery at the time she went to the

(Testimony of C. C. Kinsman.)

yards? A. She was in need of an overhauling.

Q. Was she in need of anything beyond what was shown by these specifications of work?

A. Possibly a new stack.

Q. She was in need of a new stack? A. Yes, sir.

Q. Was that known at the time she went over there? A. Not to my knowledge.

Q. Do you know that that need was determined after she was over there?

A. Yes, sir, that was determined after she was over there.

Q. Was there anything else that she was in need of?

A. There may have been minor jobs that we came across.

Q. Do you know anything about the needs of new tank-tops?

A. That was needed before we went over there.

Q. That was needed before you went over there?

A. Yes, sir.

Q. Yet, that was not covered in the specifications?

A. No, sir, I knew that was necessary.

Q. What tank-top was in need of the repair work?

A. No. 4 on the port side. [1601—1512]

Q. Was any repair work done to No. 4 on the port side? A. Yes, sir.

Q. What was that work?

A. The plates were renewed. Nearly all of the plates were renewed.

Q. Can you state now what plates were not renewed? A. Yes, sir.

(Testimony of C. C. Kinsman.)

Q. Please do so.

A. That portion of the port side of No. 4 in the shaft-alley was not renewed. The last plate, or the plate next to the after bulkhead was not renewed. The plate next to the forward bulkhead or the bulkhead between No. 3 and No. 4 was not renewed. The margin plate was not renewed.

Q. Can you, Mr. Kinsman, make a sketch of that part of the ship covered by No. 4 tank on the port side? A. Yes, sir.

Q. Please do so.

A. Yes, sir. (The witness draws a diagram.)

Q. You show me the sketch that you have made of the tank-top, do you? A. Yes, sir.

Q. Will you please now do some writing on it. Tell us what this center line is (pointing).

A. That is a fore and aft center line.

Q. Where is the No. 4 tank-top?

A. This is the No. 4 tank-top between these bulkheads and the sides of the ship.

Q. Please put the letters A, B, C and D on the corners of the No. 4 tank-top.

(The witness does as requested.)

Q. Which is the starboard No. 4 tank-top? Place the letter "E" in there.

A. Yes, sir. (The witness does as requested.)

Q. And which is the port? A. Here (pointing).

Q. Place the letter "F" in that. Now, please mark the lines of the shaft-alley, first marking the starboard line. Now, will you please mark the port line. Now, the line under the words [1602—1513]

(Testimony of C. C. Kinsman.)

“shaft-alley” on the starboard side is the shaft-alley bulkhead on that side? A. Yes, sir.

Q. The line just above the words “shaft-alley” on the port side is the port bulkhead of the shaft-alley?

A. This is the port and this is the starboard (pointing).

Q. Answer the question. A. Yes, sir.

Q. What do you mean by fore and aft center-line that runs through the shaft-alley? What do you mean by that?

A. The fore and aft center-line of the ship.

Q. Now, will you please mark the confines of the port side of No. 4 tank with the figures 1, 2, 3 and 4?

A. Yes, sir.

Q. Now, will you please state what work was done on the No. 4 port side tank-top as shown by your diagram?

A. That portion which is not crosshatched.

Q. That is the clear portion in which the letter “F” is found? A. Yes, sir.

Q. In the center? A. Yes, sir.

Mr. McCLANAHAN.—I offer the diagram in evidence and ask that it be marked Respondent Kinsman No. 1.

(The diagram is marked “Respondent Kinsman No. 1.”)

Q. Mr. Kinsman, was any work done on the “Hilsonian” outside of the smokestack, the No. 4 tank-top and the work done under the specifications at this time when she was at the yard?

A. There was work done—

(Testimony of C. C. Kinsman.)

Q. I am not asking you what it was, but if there was work? A. Yes, sir.

Q. Was any work done on the starboard No. 4 tank-top? A. No, sir.

Q. I hand you the libel filed in this case and call your attention to the first schedule of the libel, and ask you if you [1603—1514] have seen the first three pages of that document before (handing).

A. Yes, sir.

Q. I hand you another document, and ask you if you have seen that document before?

Mr. FRANK.—What is the other document?

Mr. McCLANAHAN.—I will give it to you in just a moment. A. Yes, sir.

Q. What is the last document that I have handed to you? A. It is a copy of Schedule 1.

Q. All of Schedule 1, or the first three pages?

A. A copy of the first three pages.

Q. How do you know it is a copy?

A. I believe I checked one with the other.

Q. You believe, or do you know?

A. There are corrections here in my handwriting.

Q. Answer my other question, please. Do you believe or do you know that you checked one with the other? A. I know it.

Q. What are the corrections that you refer to? By corrections you mean there are matters of distinction between the two? A. Yes, sir.

Q. What are they?

A. There is a correction there (pointing).

Q. That cannot go into the record. There is a cor-

(Testimony of C. C. Kinsman.)

rection on the 8th line of the document that I have handed you? A. Yes, sir.

Q. Mr. Kinsman, the paper that I have handed you is simply a subdivision of Schedule 1, the first three pages of it, into 140 items, is it not? A. Yes, sir.

Q. And the only difference between Schedule 1 as contained in the libel and this document which you are now examining, is as follows: on the 8th line, after the expression "L. P. Valve [1604—1515] motion" the word "and" appears on the libel schedule? A. Yes, sir.

Q. And the word "on" on yours? A. Yes, sir.

Q. And you have so designated it? A. Yes, sir.

Q. The 37th item of your paper, after the words "Stern frame" the word "line" appears on the libel schedule and the word "Zinc" on yours, is that correct? A. Yes, sir.

Q. On the 40th line, after the words "steel collar" the word "for" appears on the libel schedule and the word "to" on yours? A. That is right.

Q. And in the 70th item of your schedule you have inserted in pencil after the word "thrust" the word "shaft"? A. Yes, sir.

Q. The word "shaft" appearing on the libel schedule? A. Yes, sir.

Q. In the 97th item of your schedule, after the words "guide brasses of" there appear the letters "L. P." on the libel schedule? A. Yes, sir.

Q. And in yours it is written out as "Low pressure"; is that right? A. Yes, sir.

Q. With those exceptions the paper is identical

(Testimony of C. C. Kinsman.)

with the libel schedule, is it? A. Yes, sir.

Q. With the exception that the items are numbered consecutively from 1 to 140? A. Yes, sir.

Mr. McCLANAHAN.—We offer this in evidence.

Mr. FRANK.—What is the purpose of it?

Mr. McCLANAHAN.—It is going to facilitate the examination of the witness. I ask that it be marked “Respondent Kinsman Exhibit No. 2.”

(The exhibit is here marked “Respondent Kinsman Exhibit No. 2.”) [1605—1516]

Q. Do you know Mr. Fred Gardener?

A. I do.

Q. Do you know Mr. L. Heynemann? A. I do.

Q. Who are those gentlemen?

A. They are both consulting engineers.

Q. Residing in this city?

A. Yes; that is, I know they are doing business in this city, I could not say that they are residing here.

Q. Did you ever have anything to do with Mr. Heynemann or Mr. Gardener, or both of them, with reference to repair work which was done by the United Engineering Works in August and September, 1909, on the “Hilonian”? A. I did.

Q. What was it that you had to do with them?

A. I had orders to point out all the work which was done on that occasion?

Q. Point it out to whom?

A. To Mr. Gardener and to Mr. Heynemann; first, to Mr. Gardener.

Q. Now, will you please take your Exhibit 2, and go over it item by item and indicate what work you

(Testimony of C. C. Kinsman.)

pointed out to Mr. Gardener and to Mr. Heynemann.

Can you do that? A. Yes, sir.

Q. All right, commence and do it and call out the numbers.

A. You mean where I showed them the whole of it?

Q. I want you to make your explanation of what you did show, covering each item as you go along ?

A. I showed them No. 1, with this exception, that the fore and aft and thwartship angle-irons could not be seen.

Q. Now, make any explanation which you have to make with reference to your work on this occasion, as you go along? A. No. 2—

Q. (Intg.) Well, if you are not going to make any explanation [1606—1517] of that I will have to ask you a question; why did you not show them the fore and aft and thwartship angle-irons?

A. Because we did not go into the tank.

Q. Could that be shown? Where are they?

A. They are in the tank.

Q. Can they be seen from the top?

A. No, but the extent of them could be shown by the riveting on the tank-top, which was done.

Q. Was that shown them? A. Yes, sir.

Q. Well, now, you see, that was a part of the explanation which you did not make. Now, as you go along, make a full and complete explanation of each item.

Mr. FRANK.—Q. The extent of that was shown by the riveting, was it? Is that it?

Mr. McCLANAHAN.—Q. Proceed, Mr. Kinsman,

(Testimony of C. C. Kinsman.)

we are wasting time.

A. No. 2 I could not show. No. 3 was shown to them, with the exception of the patches riveted over the holes. No. 4 was shown to them. And No. 5. And No. 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17. No. 18 was not shown to them; we could not get inside of the boilers; the extent of this work was described to them.

Q. That is the extent of the work done by the United Engineering Works, under item 18, was described to Heynemann and Gardener?

A. Yes, sir.

Q. Now, proceed.

A. No. 19 was shown to them; No. 20 was shown to them, but I could not give them the exact amount.

Q. What is No. 20?

A. Lagging on main boilers, repaired and renewed.

Q. Why could not that be accurately determined?

A. Because between the time of putting it on and the time of [1607—1518] the visit of Mr. Gardener and Mr. Heynemann that had all been painted.

Q. Did you know, at the time it was put on, how much was put on? A. Approximately.

Q. What was that amount?

A. As I remember it at that time, it was some 60 or 80 square feet.

Q. Did you make that explanation to Gardener and to Heynemann? A. Yes, sir.

Q. Now, proceed?

A. No. 21, this was shown to them, but they could not see the whole of the main stop-valve stem, but I

(Testimony of C. C. Kinsman.)

gave them a description of what they could not see at the time. No. 22, they did not see the actual discs and seats but I showed them similar ones or squares that were on the ship.

Q. What you did show them were the counterpart of the subject of the repair work?

A. The exact counterpart. No. 23, I showed them everything except the valve discs and the seat and a portion of the valve stem.

Q. With reference to No. 23, did you have any conversation with them about the valve and the disc?

A. I described the design of them.

Q. Did you describe the work that was done on them? A. The size of them.

Q. Please make that explanation as you go along.

A. No. 24, they were shown the strap-hangers on the feed-lines but there were no hangers on the bottom blow-line.

Q. Are there strap-hangers on the bottom blow-line now? A. No, sir.

Q. Were there any before the ship went over to the yards of the United Engineering Works?

A. No, sir.

Q. Then you did not show them the strap-hangers on the bottom blow-lines because there are no strap-hangers on the bottom [1608—1519] blow-lines?

A. That is it.

Q. And there were none at any time? A. No.

Q. Now proceed.

A. No. 25, I showed them where the low water-cocks were placed; naturally they could not see the

(Testimony of C. C. Kinsman.)

holes; they naturally assumed there was a hole there.

Q. Did they see the low water-cocks?

Q. Yes, and the size of them. No. 26, they could not see the damper, but the handle was shown to them and the damper described. No. 27 was shown to them; No. 28 was shown to them; and No. 29; No. 30a, 30b, and 31. No. 32 I could not locate.

Q. Have you been able to locate No. 32?

A. No, sir, I have never located it. No. 33 was shown to them, and 34, 35 and 36 were all shown to them. No. 37 we could not see. 38, they were shown the rudder-head block. No. 39, they could not see but it was described to them; the same comment as to No. 40. No. 41, the rollers for the chain-leads were shown to them, and I believe I explained about them at the time, that I doubted if they had been raised. No. 42 could not be seen at that time. 43, 44 and 45 the same comment.

Q. That is, they were not shown to them?

A. No. No. 46 they have seen; No. 47—

Q. When you say “they have seen” you mean you showed it to them?

A. Yes, that I pointed it out to them. 46, 47 and 48 were all shown to them. 49 and 50 could not be seen at that time. 51 and 52 they have seen. No. 53 could not be seen at that time. 54, 55, 56, 57 and 58 were all shown to them. 59—these fittings could not be shown to the experts as they had been removed before their examination.

Q. Did you make any explanation to them about what No. 59 was? A. Yes, sir.

(Testimony of C. C. Kinsman.)

Q. Well, why did you not state it, Mr. Kinsman? Did you [1609—1520] describe those fittings?

A. Yes, sir.

Q. Now, proceed.

A. No. 60 and 61 were shown to the experts. No. 62 was shown to them but I explained to them that it was not necessary for the purpose which is stated here. No. 63 and No. 64 were shown to them. No. 65 they could not see, but the nature of this work was explained to them. No. 66 they could not see but the nature of the work was described. No. 67, 68 and 69 were all shown to them. No. 70, they could not see the actual faces of the couplings but they could see the couplings and determine the size. No. 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82 and 83, were all pointed out to them. No. 84, they could not see the valves but they were described to them and the sizes given to them. Numbers 85, 86 and 87 were all shown to them. No. 88, the L. P. piston they could not see, but the follower they did see. No. 89, the spare L. P. valve-stem, they saw, that was shown to them. No. 90, they did not see the nut but they saw the spare one or the similar one to it. No. 91, these bolts were shown to them but there was a doubt in my mind whether they were renewed, or not. No. 92, the head was pointed out to them, or the cover was pointed out to them, but they could not see the ribs.

Q. Did you make any explanation of what they were?

A. At that time I described the number of ribs and the size of the holes. Nos. 93, 94 and 95 were all seen

(Testimony of C. C. Kinsman.)

by the experts. No. 96, the neck-bushing could not be seen, but was described at that time. No. 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, and 116 were all shown to the experts. No. 117, they did not see the valve-seats or discs but the same were described to them. Nos. 118, 119, 120, 121, 122, 123a, 123b and 124, were all pointed out to them. No. 125, they did not see the tape but [1610—1521] the amount was easily determined.

Q. Was it determined?

A. They measured it, yes. No. 126 was pointed out to them. No. 127 I never could find and never knew of anything of that nature on the ship. No. 128, they could not see the corrugated gaskets, but the sizes of them were easily determined. No. 129, the cylinder was pointed out to them, but the bull-ring, rings and so forth on the inside they did not see but they were described to them, No. 130, the chipping and facing that was done on the top of the valve could not be seen, but the extent of the work was described to them. Nos. 131, 132 and 133 were all pointed out to them. No. 134, they did not see the interior of the cylinder or the bullring; they were given the size of the cylinder and a description of the bullring. Nos. 135, 136, 137 and 138 were all shown to them. No. 139 was pointed out to them, with the exception of the strainers. No. 140, only a portion of the valve-stem was shown to them, but the rest of it was described.

Q. Did you describe the strainers to them under item 139?

(Testimony of C. C. Kinsman.)

A. I believe they have seen them since.

Q. That is not what I am asking you. Did you describe the strainers to them, yes or no?

A. I gave them the size of the valve.

Q. Mr. Kinsman, are we to understand that you showed this work to these men once?

A. Many times.

Q. Many times? A. Yes.

Q. When was the first time the work was shown to both or to either of these men?

A. Can I refer to notes as to the arrival and the departure of the ship?

Q. Anything that will assist your memory.

A. The first time Mr. Gardener visited the ship was upon the [1611—1522] arrival of the ship. On the date of the arrival of the ship the first trip after Putzar had left the ship. That was March 13th.

Q. That is, the ship arrived March 13th?

A. Yes, and that was the date of his first visit.

Q. What year was that? A. 1910.

Q. That was the date of his first visit?

A. Yes, sir.

Q. And the date of his first being shown this work?

A. Yes, sir.

Q. Now, proceed.

A. Between March 13th and March 19th Mr. Gardener made, I think three visits; either two or three, I am not certain.

Q. Who accompanied him on his visits?

A. He was alone at that time.

Q. Who went over the ship with him? A. I did.

(Testimony of C. C. Kinsman.)

Q. Anyone else?

A. I think the captain and the mate and Captain Saunders did, but not on the first day.

Q. Have you now any recollection of the extent of those visits of Mr. Gardener?

A. Well, they were very thorough. He spent considerable time there. I remember the first day he came in the morning and afterwards in the afternoon. He made two visits on that day.

Q. Now, proceed.

A. Then on the date of arrival on the next trip Mr. Gardener and Mr. Heynemann came down. That was on the 22d of April.

Q. What year?

A. The same year, 1910. And between April 22 and May 4, the sailing date of that ship on that trip, to my knowledge they both made at least four visits.

Q. Of what extent?

A. Well, on one occasion they kept me there until very late at night. [1612—1523]

Q. When did they come on that occasion?

A. I think they spent about 30 hours during the time we were in port.

Q. That is, during the "Hilonian's" stay on that occasion at this port, they spent 30 hours?

A. Yes.

Q. Why do you remember it was 30 hours?

A. Well, I remember keeping track of it there at one time because I was getting kind of tired of it.

Q. That was in April, was it?

A. Yes, April 22 to May 4. April 22 was the first

(Testimony of C. C. Kinsman.)

visit of Mr. Heynemann.

Q. And on each occasion was Mr. Gardener with him after that? A. Yes, sir.

Q. They were together?

A. Mr. Heynemann made arrangements with me to visit that ship on a Sunday. I gave him the key to my room. I know that on the following morning his clothes were in my room, though I could not say that he was there on that Sunday. The following trip, between June 5 and 15, I remember one visit by Mr. Heynemann and Mr. Gardener, accompanied by Mr. Diericx and yourself. I remember that visit clearly. Whether or not they visited the ship again during that time I cannot remember. And since that time, in the month of September of this year, I visited the ship with Mr. Gardener and Mr. Heynemann and spent two or three hours there.

Q. On these several occasions when you were present and Gardener and Heynemann were on the ship, what was done? Give it to us not in detail but give a general statement of what was done.

A. A general survey of the work that was done at the United Engineering Works in September, 1909.

Q. What do you mean by a general survey?

A. Well, we went over the whole work which was performed at that time. [1613—1524]

Q. What do you mean by "going over"?

A. They occupied their time in making measurements and sketches and I presume estimates.

Q. Was the work discussed with you?

A. It was.

(Testimony of C. C. Kinsman.)

Q. Do you know of your own knowledge whether Messrs. Gardener and Heynemann, or either of them, have seen any of the work which you have stated you were unable to show them?

A. Only from hearsay.

Q. Were they on the ship at the time she was in the dock recently? A. They told me they were.

Q. Then you don't know? A. No.

Q. Now, Mr. Kinsman, I hand you "Curtis Exhibit No. 4" and ask you if you have ever seen that book before? A. Yes, sir.

Q. I hand you another paper and ask you what that is.

A. That is a copy with corrections made in ink, on the time-book.

Q. An exact copy?

A. Yes. There may be a few pencil marks on here that do not belong here.

Q. How do you know it is a copy?

A. Well, I checked one into the other.

Mr. McCLANAHAN.—I offer that in evidence, Mr. Frank, simply as a means of convenience for us both. The time-book itself is in bad shape. I ask that it be marked "Respondent Kinsman Exhibit No. 3."

Mr. FRANK.—I think I will have to object to that being put in evidence. It is utterly immaterial. I do not want to get this record built up, so that when Mr. McClanahan comes to appeal the case there will be so very much printing and costs. The original is in evidence and that is sufficient.

(Testimony of C. C. Kinsman.)

Mr. McCLANAHAN.—I think, Mr. Frank, when it comes to the question of appealing, I can stipulate with you about this [1614—1525] document which I have offered.

(The document was here marked “Respondent Kinsman Exhibit No. 3.”)

Q. Mr. Kinsman, have you at any time made a classification of the time of labor and the kind performed as shown by “Curtis Exhibit No. 4”?

A. Yes, sir.

Q. I hand you a document and ask you what that is.

A. That is a classification of the kind of labor and the number of hours of labor as it appears from that exhibit, with the exception of the lead pencil notes.

Q. What lead pencil notes do you refer to?

A. What I considered a duplication in that book.

Q. What lead pencil notes are you referring to—on the sheet itself? A. Yes.

Q. The only lead pencil notes on the sheet?

A. The notes under the heading of “Machinists, machinists’ helpers, riggers and foremen.”

Q. What is this note up at the top, in pencil, “September 4, 100 added”?

A. That should not be there.

Q. You don’t know anything about that?

A. Yes, I put it there; that was a correction I made.

Mr. McCLANAHAN.—We offer this sheet in evidence and ask that it be marked “Respondent Kinsman Exhibit No. 4.”

(Testimony of C. C. Kinsman.)

Mr. FRANK.—I object to that upon the ground that it is immaterial and upon the further ground that it does not appear that this witness is in any position to make a classification.

(The document is here marked “Respondent Kinsman Exhibit No. 4.”)

Mr. McCLANAHAN.—Q. Mr. Kinsman, I understand that this [1615—1526] document, Exhibit No. 4, with the exception of the pencil memorandum which you have referred to, is an exact transcript of the time-book, “Curtis Exhibit No. 4”; is that correct?

Mr. FRANK.—That is utterly improper, Mr. McClanahan. It is an attempt to justify yourself. The witness can tell what it is; it is immaterial what you understand it to be.

Mr. McCLANAHAN.—Now, Mr. Frank, you are wasting a lot of time by that, and unnecessarily so.

A. Yes, sir.

Mr. McCLANAHAN.—You ought to join with me, Mr. Frank, in clearing this matter up as briefly as possible.

Mr. FRANK.—Yes, I ought to, but not in that way.

Mr. McCLANAHAN.—Q. Explain, Mr. Kinsman—Mr. Frank seems to insist upon it—what you have done in the labor which is shown on Exhibit 4, with reference to the time-book.

A. This sheet is a copy of that book, under the classifications called for in that book, of the number of hours on each day of that time-book, with the one

(Testimony of C. C. Kinsman.)

addition that I have placed here in red ink, the number of names that appear on each day under each classification.

Q. And where did you get the number of names appearing on each day in each classification?

A. By counting them.

Q. By counting them on the back of what sheets in the time-book?

A. By counting the names as they appeared.

Q. The names as they appeared on the sheets?

A. Yes, sir.

Q. Now, will you make your explanation of the pencil markings at the bottom of the exhibit, beginning first with the machinists?

A. I have here, "Minus 130 hours"; in other words, 130 hours, in my estimation, should be subtracted on September 17th, because I consider the fourth sheet of September 17th a duplicate, or a duplication of the first sheet of September [1616—1527] 17th; that is to say, sheet 4 is a duplication of part of sheet 1 of September 17th.

Q. But the whole of sheet 1 of September 17th appears on your Exhibit 4; in other words, the duplication appears there?

A. Yes, everything appears here, and in fact 14 hours—

Q. (Intg.) Just wait a minute; we will get to the 14 hours in a moment. Your memorandum in pencil, under the heading of "Machinists," "130 hours, September 17th," means there should be taken

(Testimony of C. C. Kinsman.)

off 130 hours on that day because of that duplication?

A. That is what I think. Now, I have here "Plus 10."

Q. Under "Machinists"? A. Yes, sir.

Q. What is your explanation of that?

A. I forget the date, but there was one case there where a man worked 10 hours straight, 4 hours overtime, and he is only credited with 8 hours total time and I thought that should be 18, and I made this notation "Plus 10."

Q. That is, you think the book shows a clerical mistake? A. Yes, sir.

Q. And you show 10 hours more than it does?

A. Yes, sir.

Q. Referring to your pencil notation under "Machinists helpers" what is your explanation?

A. On the 17th of September I have "Minus 100," due to the same duplication of sheet 4 on the 17th of September. I also have here "Minus 14 on August 26th, night."

Q. What does that mean?

A. In "Curtis Exhibit 4" there appears on that night 13 names but only 12 numbers in the hour column. In my copy there appears 14 numbers—

Q. You mean your copy of the time-book?

A. Yes. [1617—1528]

Q. Meaning your "Exhibit 3"?

A. Yes. As all the men worked the same number of hours I could not determine which one was left out and I allowed the 14 hours in here.

(Testimony of C. C. Kinsman.)

Q. What is the explanation of the pencil markings under the title "Riggers"?

A. "Minus 86 hours on September 17th," the same duplication of part of sheet 1.

Q. What date? A. September 17th.

Q. What is your explanation of the pencil markings under "Foreman"?

A. The same duplication on September 17th, "Minus 12."

(A recess was here taken until 2 P. M.) [1618—1529]

AFTERNOON SESSION.

C. C. KINSMAN, direct examination resumed.

Mr. McCLANAHAN.—Q. Mr. Kinsman, was there any change in the work that would affect knowledge of its character between the completion of the work by the United Engineering Works and its inspection by Messrs. Gardener and Heynemann?

A. No, sir, with one exception. I might explain that.

Q. What is the exception?

A. That was on the whistle-pipe. They placed a union—

Q. Who did?

A. The United Engineering Works, and a nipple on that line which the crew of the ship removed and replaced by a pair of flanges previous to their inspection.

Q. Did Gardener and Heynemann have knowledge of the nipple and what else was it?

(Testimony of C. C. Kinsman.)

A. And the union.

Q. And the union? A. They did.

Q. How did they have it?

A. I explained that to them.

Q. Mr. Kinsman, how much of your time during the repair on the "Hilonian" was spent by you in watching the work?

A. Practically all of my time with the exception of nights, Sunday and Admission Day, the 9th of September.

Q. Was that the work that you showed Messrs. Gardener and Heynemann, the work that you saw progressing? A. Yes, sir.

Q. Mr. Kinsman, in the performance of work under the specifications which you examined this morning, was anything uncovered upon which it was found necessary to do work?

Mr. FRANK.—I do not understand that.

Mr. McCLANAHAN.—Q. Do you understand the question, Mr. Kinsman? [1619—1530]

Mr. FRANK.—I suppose that is all that is necessary. If Mr. Kinsman understands it none of us need understand it.

Mr. McCLANAHAN.—I am very much surprised that you do not understand it. Your case abounds with evidence of work that was uncovered in the performance of the specification work which was not known of before and which work had to be done. That question is directed to that matter entirely.

Q. Do you understand the question, Mr. Kinsman?

A. I think I do.

(Testimony of C. C. Kinsman.)

Q. Then answer it.

A. The work called for in the specifications or part of it was uncovered.

Q. You evidently do not understand my question. In the performance of the work and all of it called for by the specifications, or which was done under the specifications, was anything uncovered upon which it was found necessary to do work?

A. No, sir.

Q. Did you know Mr. Putzar before the repair work was commenced on the "Hilonian"?

A. I had met him.

Q. When did Mr. Putzar report for work as a timekeeper on the "Hilonian"?

A. Sometime on the second day after arriving at the United yards.

Q. What day would that be? A. The 24th.

Q. Of what month? A. August, 1909.

Q. Did Mr. Putzar occupy a room on the "Hilonian" during the repair work? A. He did not.

Q. Did you ever see Mr. Putzar using the time-book which is marked "Curtis' Exhibit 4" during the progress of the work?

A. I never saw the time-book before I saw it here.

Q. How often did you see Mr. Putzar during the progress of the work?

A. I saw him every day except Sundays—that is, every day I was on the job. [1620—1531]

Q. Did you see him with any kind of a book?

A. He had a hand-book.

Q. What kind of a book was that?

(Testimony of C. C. Kinsman.)

A. Such as we all carry, a pocket-book.

Q. A book that you carry in your pocket?

A. Yes, sir.

Q. When you say "we all carry" what do you mean?

A. Everybody connected with a job of that description.

Q. Did you carry one? A. Yes, sir.

Q. Did Mr. Klitgaard carry one? A. Yes, sir.

Q. Did Mr. Williamson carry one?

A. I could not say that he did, but I presume that he did.

Q. Did Mr. Gray carry one?

A. Well, if I was in his position I would. I could not say that he did.

Q. Mr. Kinsman, did you ever see Mr. Putzar checking off the men, employees of the United Engineering Works as they went on or from the ship?

A. No, sir.

Q. Do you know of any occasion where it would have been impossible for him to have done so?

A. Yes, sir.

Q. When was that?

A. Well, I recollect two occasions on leaving the ship carrying on a conversation with Mr. Putzar well up in the yard, where it would be absolutely impossible for him to check the men coming off the ship, and at the time they were coming off the ship.

Q. Have you ever had any experience in repair work on ships in the way of superintending it or otherwise? A. I have.

(Testimony of C. C. Kinsman.)

Q. State your experience.

A. Starting at the last, the tug "Intrepid" of Honolulu, a year ago last September, I think. I not only wrote the specifications for that job but carried them out in full.

Q. Who was the job performed by?

A. The Honolulu Iron Works? [1621—1532]

Q. Did you on that job keep time yourself?

A. I did.

Q. How did you do it?

Mr. FRANK.—It is immaterial how he kept time.

Mr. McCLANAHAN.—I withdraw that question if it seems to displease you, Mr. Frank, for the present only.

Mr. FRANK.—I do not want you to please me—displease me.

Mr. McCLANAHAN.—Then I won't withdraw it.

Q. Answer the question, Mr. Kinsman.

Mr. FRANK.—Subject to objection.

A. I kept time on that job by getting the names of the men, checking them in the morning, also seeing that they were on the job during between morning and noon, checked them in the afternoon and also seeing them on the job in the afternoon.

Mr. McCLANAHAN.—Q. Did you keep time of the hours worked?

Mr. FRANK.—The same objection to this whole line of examination. It is immaterial what he did on the "Intrepid."

A. I kept the actual hours worked.

(Testimony of C. C. Kinsman.)

Mr. McCLANAHAN.—Q. Give your next experience.

Mr. FRANK.—The same objection.

A. I am taking the last first. The previous one was in Aberdeen, Washington, which I also made the specification of and overhauled the steamer “Fair Oak.”

Mr. McCLANAHAN.—Q. Did you keep time at that time? A. Yes, sir.

Q. In the manner you have indicated on the “Intrepid”? A. The same way.

Q. State your further experience.

A. Between those two jobs I supervised the installation of the propelling machinery on the steamer “Raymond” in San Francisco, the steamer “Gray’s Harbor” in Portland, and on [1622—1533] both of these jobs I kept time not for the job, but for my own personal satisfaction.

Q. In the same manner as you have indicated?

A. Yes, sir.

Q. Proceed. Did you have anything to do with repair work on a ship?

A. Well, I have been on numerous ships where there were repair jobs going on.

Q. How many ships have you been connected with in the engine-room during your experience?

A. Offhand, I should say 26.

Q. How long have you held a chief engineer’s license? A. About five years.

Q. Mr. Kinsman, you are familiar, are you not, with the work done on the “Hilonian” other than

(Testimony of C. C. Kinsman.)

which was covered by the specifications, and the specifications as modified? A. Yes, sir.

Q. What we may call extra work? A. Yes, sir.

Q. Would there have been any difficulty in keeping track of this extra work performed on this job in the way of time and material?

A. I don't think so.

Q. Do you remember when the "Hilonian" was docked at the works of the United Engineering Works? A. The date do you mean?

Q. Yes. A. On August 23d.

Q. I mean the day she was put on the marine railway? A. I think I do.

Q. What was it?

A. September 10th. I should like to explain that answer.

Q. All right.

A. On September 9th I was not on board of the ship, but the next day I was told that Captain Matson had been over there and made the remark he would like to see the ship on the dock, and I know I was on the ship when she went on the dock.
[1623—1534]

Q. Do you remember the gudgeon rudder work that was done on the "Hilonian" at this time?

A. I saw the work going on; yes.

Q. Were you on the ship when that work was found to be necessary? A. I must have been.

Q. Do you remember the uncovering of that work?

A. I think that work was uncovered when we went on the dock.

(Testimony of C. C. Kinsman.)

Q. When you first went on the dock?

A. Yes, sir.

Q. Do you know when work was actually commenced on the gudgeons?

A. That work was commenced on the day after we got in the dock.

Q. Do you know what time of the day?

A. I don't remember whether they started to unship the rudder the night we got on the dock or the day following; that is, the first thing in the morning on the day following.

Q. Do you know whether after work was commenced on the gudgeons it was continuously performed?

A. I cannot think of any reason to think otherwise.

Q. Who had charge of the crew of the "Hilonian" as she was undergoing repairs?

A. Mr. Petersen had charge of the deck department and I had charge of the engineer's department.

Q. Were any of the crew on the ship at night while she was undergoing repairs?

A. In the engineer's department there was only one; that is all I can answer.

Q. Who was that? A. Mr. Klitgaard.

Q. The chief engineer? A. Yes, sir.

Q. You were not on the ship at night?

A. No, sir; nor none of the crew with the exception of one night.

Q. What night was that?

A. I think that was the night before we left the

(Testimony of C. C. Kinsman.)

yard, on the 21st of September.

Q. That was on the night of the 21st of September? [1624—1535] A. Yes, sir.

Q. Aside from that none of the crew were on the ship at night?

A. That is, you are talking of the engineer's department?

Q. If that is what you are talking of?

A. Yes, sir.

Q. Do you know whether the United Engineering Works could connect up their current with the local county current, or not? A. I think they could.

Q. You don't know, or what is the distinction between your thinking so and knowing so?

A. I remember on one occasion when they burned out all the lamps in the ship by hooking on a heavier current than the lamps would stand.

Q. Was that in the daytime? A. Yes, sir.

Q. How does that assist you in making the statement that you think they could connect up with the city current?

A. Well, we never had that trouble at any other time. I assume that the city current was different from their current.

Mr. FRANK.—I move to strike out all the testimony on that subject. His assumptions are not evidence.

Mr. McCLANAHAN.—Q. That is your only knowledge on the subject? A. Yes, sir.

Q. I show you "Exhibit No. 2," Mr. Kinsman, which is the 140-item compilation of Schedule 1, at-

(Testimony of C. C. Kinsman.)

tached to the libel. Calling your attention to the 9th item of that exhibit, have you any comment to make on that item? A. No. 9?

Q. Yes.

A. "Made and fitted two sets of iron guards for H. P., and L. P. crank-pits"?

Q. Yes.

A. To the best of my recollection these were simply repaired.

Q. You make a distinction between being repaired and made as stated in the specifications?

A. Yes, sir. [1625—1536]

Q. Calling your attention to item No. 24, I will ask you if you have any comment to make on that item?

A. You mean "Supplied and fitted strap-hangers on feed and bottom blow-lines"?

Q. Yes.

A. There are no hangers on the bottom blow-lines nor has there ever been any while I was in the ship.

Q. I call your attention to No. 23 of the specifications, and ask you if you have any comment to make on that item?

A. No. 23? "Made and fitted two valve-discs, seat, yoke, stem and nut for auxiliary steamline over boilers." The fitting was all done by the crew.

Q. What crew? A. The engine-room crew.

Q. Of the "Hilonian"?

A. Yes, sir, of the "Hilonian."

Q. Was the crew of the "Hilonian" under the pay of the United Engineering Works?

A. No, sir.

(Testimony of C. C. Kinsman.)

Q. I call your attention to item No. 54 in the specifications, and ask you if you have any comment to make on that?

A. There are four pipes leading to the engine-room tank manifold, three of which are of lead, and they were altered by the Smith Copper Works.

Q. The lead pipes were?

A. Yes, sir; there was one iron pipe which was altered by the United Engineering Works.

Q. I call your attention to item No. 58 of the specifications, and ask you if you have any comment to make on that item.

A. No, sir, I cannot recall anything now.

Q. What is that?

A. I cannot recall any comment on that now.

Q. Do you know whether the United Engineering Works furnished all of the copper pipes specified by that item?

A. My copy reads "All copper pipe connected."

Q. Who was that copper pipe furnished by?
[1626—1537]

A. The Smith Copper Works, and a portion of the copper pipe was put up by Dalano Brothers.

Q. You mean by "put up" connected?

A. Yes, sir, that is the small copper pipe leading to the gauges.

Q. I call your attention to Schedule 9 of the libel, where we find that there is a bill for the construction of a new smokestack, "Removing old and installing new for \$900"; and it is in evidence that that was a contract. Bearing that in mind, I call your atten-

(Testimony of C. C. Kinsman.)

tion to No. 59 of the list of 140 items, and ask you if that is a proper charge as an extra, outside of the contract, assuming that it pertains to the smokestack on which there was a contract, as I have suggested?

Mr. FRANK.—I object to that. This man has been held up here as the judge of this case, and the judge of every item in it, and the expert, the engineer, the cook and bottlewasher and boatswain, and I think it is about time to quit. I object to that as immaterial. This man is not the judge of what is proper or what is improper.

Mr. McCLANAHAN.—Q. Answer the question.

A. I don't think it is.

Q. Do you know whether anything was furnished in connection with that item 59, which would be in your opinion outside of the contract for the smokestack? A. No, sir.

Q. I call your attention to item No. 62, and ask you if you have any comment to make on that item.

A. It was not necessary to remove the forward bilge-pump to braze any copper pipe.

Q. Was that work done however?

A. The forward bilge-pump was removed for the purpose of making a joint between the air-pump body and the condenser. [1627—1538]

Q. Was it necessary to remove it for that purpose?

A. Yes, sir.

Q. Was the copper pipe referred to in this item 62, brazed?

A. I do not know what copper pipe they referred to.

(Testimony of C. C. Kinsman.)

Q. You do not? A. No, sir.

Q. Is there a copper pipe there?

A. There are several in that locality.

Q. Were any of them brazed by the United Engineering Works?

A. I think the Smith Copper Works brazed all the pipes.

Q. Do you know whether the United Engineering Works brazed any? A. No, sir.

Q. You do not know? A. No, sir.

Q. In connection with what work was this forward bilge-pump body removed? Work performed on what part of the ship?

A. That part of the specifications calling for the removal or the making up of the joints between the air-pump body and the condenser.

Q. I call your attention to items 70 and 71 of the 140-item list, and ask you if you have any comments to make on those two items?

A. Well, it says, "Turned down thrust-shaft couplings and faced off." The couplings were not turned down.

Q. You are speaking now of item 70?

A. Yes, sir.

Q. Were they faced off? A. Yes, sir.

Q. Do they have to be faced off under the specifications?

A. To put the shaft in proper alignment, they would have to be faced.

Q. And under what specification would that work come? A. No 9, I think.

(Testimony of C. C. Kinsman.)

Q. Is that all you have to say about No. 70?

A. Yes, sir.

Q. You mean No. 9 of the main specifications?
[1628—1539]

A. You asked me what portion of the specifications and I said No. 9. I don't know of any comment on No. 71.

Q. You have nothing to say about No. 71?

A. No, sir.

Q. I call your attention to No. 74 of the 140-item list, and ask you if you have any comment to make on that item?

A. The forward coupling was not turned down as is stated there.

Q. Can you state what item of the original specifications that work would come under—the work covered by item No. 74?

A. It would come under No. 9, if any.

Q. Will you please examine item No. 75 of the list, and state what item of the specifications that work would come under?

A. It would come under No. 9.

Q. Examine No. 76 and state what item of the specifications that work would come under.

A. That would come under No. 9.

Q. Examine No. 77, with the same question.

A. The same answer.

Q. Examine No. 78 with the same question.

A. I don't know as the water-thrust was reconstructed. The replacing of the water service would come under No. 9.

(Testimony of C. C. Kinsman.)

Q. If the water service had been reconstructed would you have known of it?

A. I think I would, yes.

Q. Can you state whether it was reconstructed or not, as distinguished from being replaced?

A. To the best of my recollection it was not reconstructed.

Q. I call your attention now, Mr. Kinsman, to Schedule No. 4 attached to the original libel. With that Schedule before you, I will ask you to examine No. 81 of the 140-item list and state under what item of the specification No. 81 comes. Or, if in your opinion it does not come under any items, state if in your opinion it comes under Schedule No. 4. [1629—1540]

A. It is clearly under No. 4.

Q. It is clearly under Schedule 4 of the libel?

A. Yes, sir.

Q. I call your attention to item 82 of the 140-item list, and ask you if that item comes under any of the items of the original specifications.

A. A portion of that No. 82 I would consider a part of No. 9 of the original specifications, and partially an extra.

Q. What is the extra of that item?

A. Enlarging the handholes.

Q. I call your attention to item 89 of the 140-item list and ask you if you can state what item of the specifications that charge comes under.

A. I don't know what a lug-thrust is. Assuming that that means "Lengthened spare L. P. Valve-

(Testimony of C. C. Kinsman.)

stem," I think that would be a portion of the recompense work in No. 2.

Q. A portion of the recompense work of No. 2?

A. Yes, sir.

Q. Mr. Kinsman, was the spare L. P. valve's stem lengthened? A. It was.

Q. For what purpose?

A. It would cease to be a spare if it was not lengthened.

Q. For what purpose was it lengthened?

A. To make it of any value to the ship.

Q. What was it used for? A. As a spare.

Q. After its being lengthened it was still used as a spare? A. Yes, sir.

Q. Or held as a spare on the ship?

A. Before it was lengthened it was not a spare.

Q. What was the duplicate of that lengthened for?

A. To receive the balance-piston.

Q. What balance-piston?

A. Which was installed on top of the low-pressure valve. [1630—1541]

Q. That is what you have termed recompense work? A. Yes, sir.

Q. Will you turn to item 90 of the 140-item list, and state what item of the original specifications that item belongs to? A. No. 2.

Q. What do you mean by No. 2?

A. That portion of the specification calling for the work on the low-pressure valve.

Q. I call your attention to No. 91 of the 140-item list and ask you what item of the original specifica-

(Testimony of C. C. Kinsman.)

tions that belongs to. A. That I don't know.

Q. I call your attention to item No. 94 and ask you the same question. A. No. 5.

Q. I call your attention to item No. 103 of the 140-item list and ask you what comment you have to make on that charge.

A. When the ship was placed at the United Engineer's dock, the turning engine was in good shape, and during the time that the employees of that company used it there were portions of it broken, and this is to replace those broken parts.

Q. I call your attention to item 104, and ask you what item of the original specifications that work belongs to.

A. I am in doubt on that.

Q. Is that your answer?

A. I know that all the set-screws were in place when the ship went over there. Now, if these set-screws were lost it should come under the original contract, but if these set-screws, the size of them were changed, I would consider that an extra.

Q. Was there any necessity for changing the sizes of the screws? A. Not that I know of.

Q. I call your attention to item No. 106, and ask you what [1631—1542] comment you have to make on that charge.

A. I don't know what a coffer-drain is.

Q. Well, assume that that means "copper." (Addressing counsel.) I suppose you will admit, Mr. Frank, that that is an error. It should mean "copper."

(Testimony of C. C. Kinsman.)

Mr. FRANK.—I do not know. You have gone through this thing and corrected it up, and this man has corrected it up to suit himself. I don't know what he means when he says he has corrected it up. It is no document of mine.

Mr. McCLANAHAN.—That is exactly what it is. Schedule 1 of your libel says, "Coffer drain." Will you admit it means copper?

Mr. FRANK.—I do not know anything about it.

Mr. McCLANAHAN.—You can ask Mr. Curtis, who is seated by your side, who made the bill.

Mr. FRANK.—This man knows all about it.

Mr. McCLANAHAN.—You decline to ask Mr. Curtis?

Mr. FRANK.—When the time comes I will explain everything that is necessary to be explained.

Mr. McCLANAHAN.—Q. Assuming that that is meant for copper what comment have you to make?

A. That should come under the original specifications in assembling.

Q. In assembling, you say? A. Yes, sir.

Q. What do you mean by that?

A. Assembling and placing in condition to turn that ship over to the owners; that is, putting her in shape to go to sea.

Q. Then I understand that would not be under any particular item in the specifications?

A. Well, it would come under the item for which they took them down. There is nothing called for in the specifications [1632—1543] to take those drains down.

(Testimony of C. C. Kinsman.)

Q. How did they happen to be taken down?

A. Probably to facilitate their work.

Q. I call your attention to item No. 108 of the 140-item list, and ask you under what item of the specifications that work comes?

A. The first part of 108 should be in 107.

Q. What part do you refer to?

A. Where it says "globe valve to drain the main steam line."

Q. But with that correction—

A. (Intg.) The latter part of 108, the replacing of the water service, should come under the original specifications in assembling. The fact that they were made of brass I would consider an extra. The removal of this water service was made necessary by No. 4 of the original specifications.

Q. Will you turn to item No. 125 of the 140-item list and tell me whether that charge comes under the original specifications or not?

A. It is part of the assembling.

Q. Then it does? A. Yes, sir.

Q. Turn to item 128 of that list, and I ask you the same question.

A. That is No. 1 of the original specifications.

Q. I call your attention to No. 130 and ask you the same question.

A. I consider that a part of the recompense work under No. 2.

Q. I call your attention to No. 134 and ask you the same question.

A. That is No. 6 of the original specifications.

(Testimony of C. C. Kinsman.)

Q. I call your attention to item No. 136 of the specifications, and ask you the same question.

A. That is No. 8 of the original specifications.

Q. I call your attention to item No. 137 and ask you the same question. [1633—1544]

A. No. 9 of the original specifications.

Q. I call your attention to the items 138 and 139 and ask you the same question.

A. No. 10 of the original specifications.

Q. Both those items? A. Yes, sir.

Q. I call your attention to item 140 and ask you the same question.

A. That I consider a part of the circulating-pump contract.

Q. I call your attention to item 127 of the 140-item list, and ask you if you have any comment to make on that charge.

A. There never was any drawings of any part of the propelling machinery of that ship on board the ship to my knowledge, and had there been I would have known it.

Q. Mr. Kinsman, these questions which I am going to ask you now, refer to the time when the “Hilonian” was undergoing repairs at the United Engineering Works. At that time was there ever done any work in the shop of the United Engineering Works to the piston-rods except that done under Schedule 4 of the libel? Please examine Schedule 4. A. No, sir.

Q. At the date of August 24, 1909, were any of the bearings of the “Hilonian” out of the ship?

(Testimony of C. C. Kinsman.)

A. No, sir.

Mr. FRANK.—I cannot repress my astonishment at the temerity and the boldness of this examination.

Mr. McCLANAHAN.—Q. Was there any work done on the tube-heads, other than that under Schedule 10 of the libel? Please examine Schedule 10.

Mr. FRANK.—And you are leading the witness from beginning to end. Why haven't you permitted the witness sometimes to testify in this case himself, Mr. McClanahan?

Mr. McCLANAHAN.—You have a right to object, Mr. Frank, but not to catechise me in the way you are doing. [1634—1545]

Mr. FRANK.—Well, the objection does not seem to do any good, and after it gets into the record it is too late to do anything with it, so I have to catechise you.

Mr. McCLANAHAN.—Please answer the question.

A. No, sir.

Q. Was any work done on the brake of the "Hilonian" except that performed under Schedule 7?

Mr. FRANK.—I will have to object and to insist that the matter of leading the witness be stopped. There is another way to examine the witness. You have been going all the way from A to Z testifying and leading the witness, and the witness simply saying yes or no, yes or no. Now, it is time that the witness testify to something himself.

Mr. McCLANAHAN.—What do you mean, Mr. Frank? Don't you know you have introduced a

(Testimony of C. C. Kinsman.)

charge against us for working on a brake?

Mr. FRANK.—I don't care—

Mr. McCLANAHAN.—You do not know that?
Well, I do.

Mr. FRANK.—I say I don't care. That does not give you any right to testify in this case.

Mr. McCLANAHAN.—I am not testifying.

Mr. FRANK.—Nobody else is.

Mr. McCLANAHAN.—I dispute that statement.

Mr. FRANK.—Well, I object to any further leading of the witness.

Mr. McCLANAHAN.—Answer the question, Mr. Kinsman.

A. No, sir.

Q. Was there any lagging work done on any cylinder in the shop, except the small balance-cylinder?

A. No, sir.

Q. Was the "Hilonian's" reverse shaft ever in the shop of the United Engineering Works?

A. No, sir. [1635—1546]

Q. Were any valves for feed-pumps ever furnished to the "Hilonian"? A. No, sir.

Q. Was any work ever done—

Mr. FRANK.—One moment; go a little slower. He need not answer you. You just put the question and that is as good as testimony. That is the way the game has been put up and we might as well have it. I want the Reporter to read the last few questions to me.

(Record read by the Reporter.)

Mr. McCLANAHAN.—Q. Was any work ever

(Testimony of C. C. Kinsman.)

done on a cylinder-head except that done to the small balance-cylinder in the shop of the United Engineering Works? A. No, sir.

Q. Were any of the "Hilonian" bed-plates, or were the bed-plates for the "Hilonian's" engine ever in the shop of the United Engineering Works?

A. No, sir.

Q. Was any work ever done on the air-chambers in the shop?

A. Do you mean in connection with the "Hilonian" job, or otherwise?

A. I prefaced this set of questions, Mr. Kinsman, with the statement that they referred to work done on the "Hilonian" during the time in dispute. Don't you remember that?

A. Well, there may have been work done on these air-chambers but they never were returned to the ship. They were discarded from the ship.

Q. Never any work done for the Matson Navigation Company? A. No, sir.

Q. Mr. Kinsman, "Adamson Exhibit No. 7" in this case, dated September 21, covering job number 5398, contains a charge for extension and brass tags for main and bilge injection; can you state under what item of work that charge comes? [1636—1547]

A. Under the installation of the circulator.

Q. You have referred to that before, have you, in your examination, to that circulator? A. Yes.

Q. And you called it the circulator-pump before?

A. The circulator-contract—the circulator-pump.

Q. It is the same thing?

(Testimony of C. C. Kinsman.)

A. Yes. I might explain there that those tags are required by law.

Mr. FRANK.—Q. Are you an authority on law, too, Mr. Kinsman?

Mr. McCLANAHAN.—Q. Will you please examine Schedule 4 of the libel, Mr. Kinsman, and state whether any work of babbitting thrust-collars, or any thrust-collar work was done on the “Hilonian” except under that schedule?

A. This called for all work that is necessary on the thrust-collars. Everything that was done on them was under this.

Q. And by “this” you refer to Schedule 4?

A. Yes, sir.

Q. Was any work ever done by the United Engineering Works on any oil-pump of the “Hilonian”?

A. No, sir.

Q. Was any work ever done by the United on a fly-wheel in the ship, except under the circulating-pump contract? A. No, sir.

Q. Was any cylinder-liner work ever done in the shop of the United Engineering Works?

A. No, sir.

Q. Is there any such thing as an air-cylinder on the ship, or was there? A. No, sir.

Q. Was anything ever done to the cover for slide-valve in the shop? A. No, sir.

Q. We are charged in this case for polishing a fly-wheel for circulating-engine. Can you state under what work that comes?

A. Under the circulating contract. [1637—1548]

(Testimony of C. C. Kinsman.)

Q. Was any shop work on the main bearings required to be done under the original specifications, or at all, except under Schedule 8 of the libel?

A. No, sir.

Q. Were any columns from the "Hilonian" ever in the shop of the United? A. No, sir.

Q. Mr. Kinsman, does the expression "main brasses" mean the same, or does it differ from main journals? Do those two expressions mean the same thing?

A. Different men have different ways of stating them; they mean the same thing.

Q. They mean the same thing? A. Yes, sir.

Q. Was any condenser from the "Hilonian" taken to the shop of the United? A. No, sir.

Q. Were any of the "Hilonian's" taps ever tempered in the shop of the United? A. No, sir.

Q. Was any swivel work called for under the original specifications? A. No, sir.

Q. If we have been charged for work under the heading "Detail for brake," under what schedule of the libel does that come? A. No. 7.

Q. If we have been charged for "alteration on bearing for main-bearing," under what schedule of the libel does that come? A. No. 8.

Q. Was anything that could be called "trolley rails" ever taken from the "Hilonian" to the shop of the United? A. No, sir.

Q. Under what item of work would a charge for "Nozzle for C. I. R. Pump" come?

A. Circulating-pump contract.

(Testimony of C. C. Kinsman.)

Q. Could any work have been performed on the wheel of the "Hilonian" prior to the ship going on the dock of the Marine railway? A. No, sir.
[1638—1549]

Q. And you have stated she went in there when—on the Marine railway?

A. On the 10th of September.

Q. Could any work have been performed on the sea-valves before the 10th of September or before she had been placed on the Marine railway?

A. It could have been, but it was not.

Q. Would it have been possible to have worked on the sea-valves, or the wheel of the "Hilonian," for 10 hours straight time on September 10th?

A. It would be possible on the sea-valves provided they took the right course.

Q. Was any work for 10 hours straight time performed on the sea-valves on that day? A. No, sir.

Q. What have you got to say about the wheel?

A. That is an impossibility unless there was a diver working on it.

Q. And there was no diver working on it?

A. No.

Mr. FRANK.—There is no use talking about you, Mr. McClanahan. Why don't you let the witness ask you the questions?

Mr. McCLANAHAN.—Keep your clothes on, Mr. Frank. I am almost through.

Mr. FRANK.—The devil of a lot of good it will do you!

Mr. McCLANAHAN.—What? To get through?

(Testimony of C. C. Kinsman.)

Mr. FRANK.—No, that kind of an examination.

Mr. McCLANAHAN.—Take the witness.

Mr. FRANK.—Well, I am not expected to conclude the examination of the witness this afternoon after that kind of business.

Mr. McCLANAHAN.—I understood you were going to take two weeks cross-examining him.

Mr. FRANK.—Well, we will see. [1639—1550]

Cross-examination.

Mr. FRANK.—Q. Mr. Kinsman, do I understand that “Respondent Kinsman Exhibit No. 3” was made up by you from “Respondent Curtis’ Exhibit No. 4”? A. It was corrected by me.

Q. And you checked it up, did you, from this, referring to “Respondent Curtis’ Exhibit No. 4”?

A. Yes.

Q. I show you, at the beginning, on the first page, the figures “5297” in red ink; where did you get that?

A. I think from the reverse side of that page.

Q. Show it to me on the reverse side of that page.

A. I am trusting to memory now. I will look. Here it is (indicating).

Mr. McCLANAHAN.—The witness shows counsel the reverse side of that page.

Mr. FRANK.—Q. That number is altered, is it not, on the reverse side of that page?

A. I don’t know whether it was altered at the time I examined it, or not. I am talking of when I made that comparison, not at the present time.

(Testimony of C. C. Kinsman.)

Q. I call your attention now to this: the original number was in carbon, was it not? A. Yes.

Q. And it is altered with a lead-pencil mark over it? A. Yes.

Q. Do you know when that was done?

A. I do not.

Q. Did you compare that with the other sheets that were delivered by Mr. Putzar to the United Engineering Works?

A. I don't know what was delivered by Mr. Putzar.

Q. You have seen "Curtis Exhibit No. 3," have you not, that is in evidence here? A. Yes.

Q. That is what I refer to. Did you compare that with those? A. I did. [1640—1551]

Q. If you did, why, then, did you not take the number that is on there, on "Curtis Exhibit No. 3"?

A. I don't know whether it was there or not.

Q. You don't know whether it was there or not?

A. No.

Q. Is that your answer now?

A. Yes, at this time.

Q. At what time? A. Now.

Q. Look at it then and see.

A. I see it now; yes.

Q. Do you mean by that answer, do you mean to suggest that it was not there when you checked those up? A. I don't know whether it was or not.

Q. Oh, you don't know whether it was or not?

A. No, sir.

Q. Did you not check them?

A. I did—now, hold on a minute; what do you

(Testimony of C. C. Kinsman.)

mean by checking them?

Q. Did you check that Exhibit No. 3 against Exhibit No. 4?

A. After I had made "Respondent Kinsman Exhibit 3."

Q. Then you noticed the difference, did you?

A. I cannot say that I did.

Q. Did you check all of the sheets of "Curtis No. 3" with "Curtis No. 4"?

A. I did not spend the same time on them that I did on this.

Q. Them and this is what?

A. "Curtis No. 4" with "Kinsman No. 3."

Q. Not the same time? A. No, sir.

Q. You have made a résumé on "Respondent Kinsman Exhibit No. 4." From which of these two documents did you make it—from "Curtis Exhibit No. 4" or from "Kinsman Exhibit No. 3"?

A. Indirectly from "Curtis No. 4."

Q. Indirectly? A. Yes. [1641—1552]

Q. What do you mean by "indirectly"?

A. Because I checked "Curtis No. 4" into that copy you have, No. 3, and from that into the résumé.

Q. So that the résumé is directly from "Kinsman Exhibit No. 3"; is that right? A. Yes, sir.

Mr. FRANK.—By the way, Mr. McClanahan, did I understand you offered this Exhibit No. 4 in evidence?

Mr. McCLANAHAN.—Yes.

Mr. FRANK.—For what purpose?

Mr. McCLANAHAN.—Oh, I don't remember. I

(Testimony of C. C. Kinsman.)

don't know that I stated any purpose.

Mr. FRANK.—Well, I would like to know the purpose now.

Mr. McCLANAHAN.—I decline to discuss it with you now.

Mr. FRANK.—You decline to give the purpose?

Mr. McCLANAHAN.—I think I stated at the time what the purpose was. I think you will find we had a long discussion over the introduction of that schedule. I may have stated the purpose. You will find it when the record is written up.

Mr. FRANK.—Very well; when we have the record written up to-morrow morning I may return to that, and I may find out what the purpose is.

Mr. McCLANAHAN.—Very well. I may have stated my purpose, I don't know.

Mr. FRANK.—Q. In making up that résumé, I understood you to say that you considered two dates—September 17th—as duplicates; is that right?

Mr. McCLANAHAN.—Two pages he said.

A. Yes, the first and the fourth page of September 17th.

Mr. FRANK.—Q. The first and the fourth pages under date of September 17th. Why did you take it upon yourself to decide that those were duplicates?
[1642—1553]

Mr. McCLANAHAN.—He did not take it upon himself to decide that they were duplicates.

A. I think I stated that in my opinion it was a duplicate.

(Testimony of C. C. Kinsman.)

Mr. FRANK.—Q. And what is your opinion based upon?

A. If you show me the sheets I will tell you.

Q. Here they are (handing).

Mr. McCLANAHAN.—Go ahead, Mr. Kinsman; don't wait.

Mr. FRANK.—Just one moment, Mr. Kinsman; this is my end of it.

A. On top of sheet 1, there appears, I think, 25 names; yes, 25 names. On sheet 4, of September 17th, the same 25 names appear in the same order, under the same job number, and the corresponding numbers of the men, the same straight time, the same overtime and the same total time, with the one exception of No. 508, S. Iverson, on the 4th page, and L. K. Siverson on page 1. On page 1 it appears 10 hours straight time, 2 hours overtime, and total 14 hours; and on the 4th page it appears 10 hours straight time, 4 hours overtime, and 18 hours total. With that exception the pages are identical. The reason I consider that a duplication is that a man cannot work 20 straight hours in one day.

Q. That is your explanation, is it?

A. Yes, sir.

Q. Before you became chief engineer of the "Hilonian," Mr. Kinsman, on what other vessel had you served as chief engineer?

A. You mean previous to going into the employ of the Matson Navigation Company?

Q. Yes.

A. I was chief engineer of the steamer "Ray-

(Testimony of C. C. Kinsman.)

mond," the steamer "Gray's Harbor," the steamer "Fair Oaks," the steamer "Lindauer," the steamer "Fair Oaks" again; I was guarantee engineer and chief engineer of the tug "Galena" [1643—1554] and I was chief engineer of the steamer "Majestic" on her trial trip.

Q. Those are all small coasting steamers, are they not? A. Yes.

Q. And that comprised a period of how long a time, that entire service?

A. Oh, two or three years.

Q. When did you go on the "Hilonian" as assistant? A. In May, 1909.

Q. And you were on her then, from that time continuously, as assistant, up to the time of the repairs in question? A. Yes, and during the repairs.

Q. During the time of these repairs, what did the engineer's crew do?

A. Overhauled all the auxiliaries, the boilers and boiler mountings.

Q. How long a time did it take them to do that?

A. They were engaged in that work all the time that vessel was laid up, from the time she arrived until she sailed.

Q. And you had charge of that crew?

A. Yes, sir.

Q. In other words, you, yourself, were engaged in that business of overhauling the auxiliaries, the boilers and the boiler-mountings during that time; is that right?

A. Yes, and also was assistant to Mr. Klitgaard

(Testimony of C. C. Kinsman.)

in regard to the other work.

Q. What did Mr. Klitgaard need of you in the other work? Could not one man take care of it?

A. I don't know what his idea was, but lots of times two heads are better than one.

Q. That is your explanation of it, is it?

A. Yes.

Q. Was Mr. Klitgaard doing anything else except taking care of the repair work?

A. Nothing else. [1644—1555]

Q. By the way, where is Mr. Klitgaard now?

A. At the present moment?

Q. Yes. A. I could not say.

Q. Well, don't confine yourself to the present moment; when did you last see him?

Mr. McCLANAHAN.—That is what you asked him about.

A. The last time I saw him was down on California Street.

Mr. FRANK.—Q. How long ago was it?

A. Oh, we had a drink together about 9 o'clock this morning.

Q. Where was Mr. Klitgaard when you say Mr. Christy came on board the vessel at quarantine?

A. On the deck, where he belonged.

Q. I suppose he does not belong in the engine-room when other people are coming to examine the engines.

A. I don't consider that his place on entering or leaving port.

Q. Well, you were neither entering nor leaving the port at that time, were you?

(Testimony of C. C. Kinsman.)

A. We were entering.

Q. The quarantine grounds are in port, are they not?

A. I do not consider the vessel entered until she is tied up to the dock. I want the chief engineer up on the deck for my own protection.

Q. You ordered him up on deck?

A. I did not say I ordered him. I said I want him up on deck for my own protection.

Q. And you are positive then that Mr. Christy came down and talked to you about the crank-shaft, are you? A. Yes.

Q. And argued it with you? A. Yes.

Q. Have you been going over these specifications, Mr. Kinsman, during the last month or so?

Mr. McCLANAHAN.—What specifications are you referring to? [1645—1556]

Mr. FRANK.—These exhibits, “Saunders Exhibit 1,” and the other exhibits in the case.

A. I have seen one copy; I don’t know which one it was.

Q. Now, is it not the fact that you have been spending most of your time for the last month or two, going over the evidence in this case and going over the specifications in the exhibits, checking up the exhibits here with counsel or with Mr. Diericx?

A. Principally on the time-book.

Q. Principally on the time-book?

A. I have gone over the others; yes.

Q. I understood you this morning to say you know nothing about these specifications, the identity of

(Testimony of C. C. Kinsman.)

these specifications that have been put in evidence here, except you think the paper of "Respondent Saunders Exhibit No. 1" is the kind of paper that the specifications handed to you were written upon; is that right?

A. No, I have testified that the contents were the same as the copy I had but that copy in particular approached the one nearer than any of the others, and one reason I said that was because of the size of the paper upon which it was written.

Q. You excluded page 3, did you not?

A. Yes.

Q. And would you not also exclude the last paragraph on page 2?

A. Not the whole paragraph, no.

Q. How much would you exclude?

A. (Reading:) "All bulkheads, gratings and bracings and pipes, and so forth removed during period of overhauling to facilitate work must be"—

Q. That was not on yours? A. No.

Q. You never saw that before until you saw this paper—is that right?

A. Not that I know of. I have no recollection of it. I believe I also testified that my copy stated 25 days [1646—1557] instead of 26.

Q. That was given you, as I understand you, when the vessel was about to go over to the works to have these repairs done?

A. After the time she came into port, that is, between the time she entered the port and the time she went over there. I do not recollect the exact date.